



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

FIRST APPEAL NO.201 OF 2016

Executive Engineer, Lower Wardha Project
Division, Wardha.

... APPELLANT

VERSUS

1. Devidas Manikrao Mangam (Dead), aged 60 years, Occ. Agriculturist.

LR's of deceased Respondent no.1.

- 1a) Anjanabai Devidas Mangam, Aged Major, Occ. Agriculturist.

- 1b) Dipak Devidas Mangam, aged about, Occ. Agriculturist.

- 1c) Roshan Devidas Mangam, aged Mjor, Occ Agriculturist. All R/o Ahirwada, Tq Arvi, Dist. Wardha.

- 1d) Shila Prakash Dhurve, aged Major, Occ. Household, r/o chincholi Gawali, Tq. Morshi, Dist. Amravati.

(Amendment as per Court's order dated 17.11.2022)

- 2) Shrikrishna Manikrao Mangam, Aged 50 years, Occ. Agriculturist.
- 3) Kalawati Narayan Dhurve (dead), Aged 70 years, Occ. Agriculturist

L.R's of deceased Respondent no.3
Kalawati Narayan Dhurve.

- 3a) Rajesh Narayan Dhurve, aged 52 years,
Occ. Agriculturist, r/o Ahirwada, Tq. Arvi,
Dist. Wardha, Pin Code 442201
- 3b) Vandana w/o Sudhakar Parteki, aged 48
years, Occ. Housewife, r/o Mahadapur,
Post. Pimpalkhuta, Tq. Arvi, Dist. Wardha –
4420201
- 3c) Jyoti w/o Yuvraj Chinchane, Aged about 43
years, Occ. Housewife, c/o Ushatai Thakre,
CRPF camp Road, Near Hanuman Mandir,
Gandhi Chowk, Shivangaon, Nagpur –
440005
4. Lilabai Mahadeorao Iwnate, aged 50 years,
Occ. Agriculturist, all r/o Ahirwada, Tq.
Arvi, Dist. Wardha.
5. The State of Maharashtra, through the
Collector, Wardha.
6. Special Land Acquisition Officer, Wardha

... RESPONDENTS

Shri Purushottam Patil, Advocate for the appellant.
Shri C.R. Najbile, Advocate for respondent nos. 1 to 4.
Shri S.C. Joshi, Assistant Government Pleader for the State.

CORAM : PRAVIN S. PATIL, J.

DATE : 24.09.2025.

JUDGMENT :

1. Heard the learned Counsel appearing for the parties.

2. Being aggrieved by the impugned judgment and order dated 17.06.2015 passed by the learned Joint Civil Judge Senior Division, Wardha in LAC No.6/2007, the appellant filed the present appeal for enhancement of compensation amount.

3. In the present appeal, it is undisputed fact that vide Notification under Section 4 of the Land Acquisition Act, issued on 05.10.1998, the land owned by respondent nos. 1 to 4 was acquired. As per the final Award compensation at the rate of Rs.56,894/- per Hectar for land, for fruit bearing trees Rs.45,512/-, for forest trees Rs.6,286/- and for Bandh/pipeline Rs.11,583/- were paid to respondent nos. 1 to 4. As such, total compensation was paid to the claimants was Rs.1,84,179/-along with the statutory benefits.

4. Respondent nos.1 to 4 have filed application for Reference by stating that the amount awarded was inadequate and same was not as per the market value. According to the respondents they are entitle for compensation of Rs.5,00,000/- per Hectar for land, Rs.10,00,0000/- for fruit bearing trees and Rs.2,10,000/- for forest trees, Rs.15,000/- for pipeline and Rs.30,000/- for electric motor pump. In support of their claim on behalf of respondent nos.1 to 4 one Devidas Manikarao Mangam was examined before the Reference Court and for determining the value of the land as well as fruit bearing and forest trees one Shri Nivrutti Deoraoji Kanse was examined as a Valuer in the matter.

5. It is admitted fact in the matter that both these witnesses were cross-examined by the present appellant. However, no witnesses were examined by the present appellant before the Reference Court.

6. In view of the abovesaid background, the Reference Court enhanced the compensation towards the acquired land at the rate of Rs.2,00,000/- per Hector by holding that same is a perennial irrigated land. In respect of fruit bearing trees and forest trees, the total compensation was awarded to Rs.4,34,500/-.

7. In the present appeal though the entire judgment and Award has been challenged by the Acquiring Body i.e. appellant however during the course of arguments, the appellant has restricted the challenge to the compensation towards the fruit bearing trees and forest trees. According to the appellant, number of trees are not properly considered in the matter and thereby excess payment has been made to the respondent nos.1 to 4.

8. Learned Counsel for the respondent nos.1 to 4 stated that they have examined Devidas Mangam as well as Valuer Nivrutti Kanse. The evidence brought on record clearly establishes the fact that there were total 403 trees, and accordingly, the compensation granted by the Reference Court is legal and correct in the matter.

9. It is also pointed out that if there is variation in the number of trees, the appellant was at liberty to adduce the evidence before the

Reference Court and pointed out the correct factual position. But as the appellant failed to adduce the same in the mater, the challenge raised by them to the number of trees, is not permissible in the present appeal.

10. I have heard both the respective Counsel at length and also gone through the original record. At the out set, it will be necessary to point out the legal position. The Hon'ble Supreme Court in the case of ***Chimanlal Hargovinddas vs. Special Land Acquisition Officer 1988(3) SCC 751*** has laid down the certain principles as to how the issues in such cases should be tackle by the Court. It is clarified that the Award of the Land Acquisition Officer should not be treated as judgment of the Trial Court, and accordingly, the proceedings of Reference are to be treated as the original proceedings to determine the market value afresh on the basis of material produced before it.

11. In respect of Expert evidence, the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh Vs. Jai Lal and ors. 1999 (7) SCC 280*** observed in paragraph 18 as under :

“18. An expert is not a witness of fact. His evidence is really of an advisory character. The duty of an expert witness is to furnish the Judge with the necessary scientific criteria for testing the accuracy of the conclusions so as to enable the judge to form his independent judgment by the application of this criteria to the facts proved by the evidence of the case. The scientific opinion evidence, if intelligible, convincing and tested becomes a factor and often an important factor for consideration along with the other evidence of the case. The credibility of such a witness

depends on the reasons stated in support of his conclusions and the data and materials furnished which form the basis of his conclusions.”

12. From this judgment it is clear that, the Expert opinion is to be considered on the basis of data furnished by him with necessary scientific criteria so as to enable the Court to come to the independent conclusion for proper adjudication of dispute on merits.

13. In case of *P. Ram Reddy and ors. vs. Land Acquisition Officer, Hyderabad and ors. 1995(2) SCC 305*, the material issue was considered by observing the practical difficulties, which the Court are generally facing in the matters due to ineffective cross-examination of witnesses or failure of the said Authorities to record the evidence in the matter. The said observations were made in paragraphs 15 and 16 of this judgment which read as under :

“15. Non-cross-examination or ineffective cross-examination of witnesses for the claimant. - Oral evidence is generally adduced in the enquiry held by Court for determination of the compensation payable for lands acquired under the LA Act. Such oral evidence, generally, comprises of either of the claimants or their witnesses examined in support of the claims of claimants for grant of enhanced compensation, which in its very nature, would be referable to matters of situation of the acquired lands, their surroundings, their value or the like. Several statements would be made by such claimants or their witnesses when they are examined-in-chief in Court, on matters that may bear on the market value of acquired lands. If the witnesses who make such statements are not subjected to cross-examination or effective cross-examination or no contrary evidence is adduced, is the Court obliged to accept such statements to be true in determining the market value of the acquired lands ? It is, no doubt true, that whenever oral evidence is adduced by parties on certain matters in

*controversy, it may become difficult for Court to overlook such evidence, if it is not shown by effective cross-examination of such witnesses who have given such evidence or by adducing contra-evidence, that the oral evidence was unreliable or the witnesses themselves are not credit worthy. But, in land acquisition references before Civil Courts, when witnesses give oral evidence in support of the claims of claimants for higher compensation the ineffective cross-examination of such witnesses, is not an uncommon feature if regard is had to the manner in which claims for enhanced compensation in land acquisition cases are defended in courts on behalf of the State. Indeed, when a question arose before this Court whether the Court is bound to accept the statements of witnesses only because they have not been effectively cross-examined or evidence in rebuttal has not been adduced, it was observed by this Court in *Chaturbhuj Pande and Others v. Collector, Raigarh*, [AIR 1969 SC 255, thus :*

“It is true that the witnesses examined on behalf of the appellants have not been effectively cross-examined. It is also true that the Collector had not adduced any evidence in rebuttal; but that does not mean that the court is bound to accept their evidence. The Judges are not computers..... they are bound to call into aid their experience of life and test the evidence on the basis of probabilities.”

16. Hence, we are unable to think that whenever the statements made by claimants' witnesses in courts are not got over on behalf of the Collector or the LAO by subjecting the witnesses to effective cross-examination or by not adducing evidence in rebuttal, the courts are obligated to accept such statements of witnesses as true, if tested on the basis of probabilities, become unreliable. If the courts were to accept such statements of witnesses as true merely because they are not subjected to cross-examination or effective cross-examination or because evidence in rebuttal thereof has not been adduced, it would amount to doling out public money to the claimants far in excess of their legitimate entitlement for just compensation payable for their lands. If such situation is prevented by courts dealing with claims for compensation by testing the statements of witnesses for claimants on the basis of probabilities, the Court will have performed the duty justly expected of them. Hence, no Court which tests the oral evidence of the

claimants on the touch-stone of probabilities calling into aid, its experience of life, men and matters and find such evidence to be untrustworthy, the same cannot be found fault with. ”

14. Keeping in mind the above said legal position, I proceeded to consider the merits of the matter particularly on the issue whether the number of trees are properly brought on record or not ?

15. At the first instance, according to me, the basic documents on which the entire proceedings is started, is the final Award passed by the Land Acquisition Officer.

16. In the present matter on 29.10.2001 the final Award was passed. The bare perusal of the Award shows, that in respect of valuation of fruit bearing and forest trees the report of Taluka Agricultural Officer, Arvi dated 23.01.2001 was called in the matter.

17. Accordingly, it is recorded in the Award that there were 53 fruit bearing trees and 255 forest trees. This aspect is not denied by both the parties. However, it is clear from the record that respondent nos.1 to 4 were not satisfied with the compensation Awarded by the Land Acquisition Officer and therefore, they have moved application for Reference of the proceedings for enhancement of compensation.

18. The application was filed by respondent nos.1 to 4 before the Civil Judge, Senior Division, Wardha bearing LAC No.6/2007

19. Bare perusal of the said application shows that present respondent nos.1 to 4 in their application stated that there were 100 fruit bearing trees and 105 forest trees. As such, they have stated that about 205 trees in their agriculture field at the time of Notification issued under Section 4 of the Land Acquisition Act. On behalf of respondent nos. 1 to 4, the evidence of Devidas Mangam was recorded before the Civil Judge Senior Division, Wardha vide Exhibit 23. In his evidence, he has stated that there were 3 mango trees of 70 to 80 years old and 100 Ber trees. As such total 103 fruit bearing trees. Then he stated that there were 105 Babhul trees and 150 Bass/bamboo trees. Accordingly, he has stated that in his field there were total 403 trees.

20. Respondent nos. 1 to 4 to corroborate their submission and to determine the value of the fruit and forest trees, examined Nivrutti Kanse as a Valuer in the matter. This Valuer has stated that he has personally visited the field on 15.10.1998. He stated that he has verified 103 fruit bearing trees and 100 forest trees. As such, in his evidence total trees were 203. However, in the Valuation Report, which was produced before the Reference Court (Exhibit 41) shows that there were 103 fruit bearing trees and 300 forest trees.

21. In the background of this evidence available on record, the submission of the appellant is that the respondents were not confirmed as to how much trees were available in the agricultural field at the time of issuance

of Notification.

22. The Appellant while pointing out above said factual aspect in the matter, has doubted the deposition of Valuer, on the basis of cross-examination conducted in the matter. It is pointed out by the appellant that the when the Valuer normally visited the agricultural field rough notes are prepared and on the basis of the same, final report is submitted in the matter. It is also necessary for an Expert to point out each and every detail and manner in which he has done the valuation or survey of the agricultural field. It is expected from the Valuer to show that he has made scientific study or research for assessing the productivity of the trees and whether he had undertaken any such work before any time of same manner. Whether he is authorized Government Valuer or not? If there are several trees standing in the agricultural field it is expected from him to state that, from in which side the fruit bearing trees are available and in which side the forest trees were standing at the time of his visit. He has to further specifically demonstrates how he has calculated the number of trees or whether he has taken the assistance of any person along with him at the time of survey of the field.

23. But bare perusal of his cross-examination shows that all these aspects are not available on record through the surveyor. It is not

clear that surveyor was/is authorized surveyor and having experience to conduct the same. Furthermore, no specific evidence came on record about the number of trees. There is variation in numbers of the trees.

24. It is further pertinent to note that at the same time, the appellant was having opportunity to lead evidence before the Reference Court and clarified from the record about the correct number of trees standing in the field at the time of Notification issued under Section 4 of the Act. But there is no justification on the part of the appellant as to why the evidence was not recorded in the matter.

25. Therefore, there is no counter evidence available on record to reach to the conclusion about the number of trees in the matter. In the background of above said factual position, the exercise which required to be done on the basis of available material in the matter.

26. Accordingly, I find that respondent nos. 1 to 4 has specifically stated that there were fruit bearing trees in the agricultural field. So also, in their Reference application, it is specifically stated that there were 3 mango trees and 100 ber trees. Therefore, I hold that there were 103 fruit trees in the field of respondents. In respect of forest trees, there is variance in the final award as well as in the Reference application filed by the appellant and in the evidence of the

Valuer. I am of the view that the Valuation done by the Taluka Agricultural Officer dated 23.02.2001, which is a part of final Award should be considered as a correct number of forest trees at the time of issuance of Notification under Section 4 because there is no objection raised to the same anytime by the respondent nos. 1 to 4. So also, the valuation and number of trees are recorded by officer of agricultural department. Accordingly I hold that there were 150 bass/bamboo and 105 babhul trees. There were total 255 forest trees.

27. In view of the above finding, the total number of trees comes to 358 at the time of issuance of Notification. The appellant in this appeal did not dispute the enhanced compensation awarded by the Reference Court in respect of trees in the matter. Therefore the calculation of the trees can be done as per the amount determined by the Reference Court. Accordingly the compensation is as under :

Sr. No.	Name of Trees	Enhanced Compensation (No. of trees and price determined)	Total amount
1.	Ber Trees	Rs.2995/- x 100 nos.	2,99,500/-
2.	Mango	Rs.15,000/- x 3 nos.	45,000/-
3	Bamboo	Rs.200/- x 150 nos.	30,000/-
4	Babhul	Rs.400/- x 105 nos.	42,000/-
	Total	358 nos. of trees.	4,16,500/-

28. Accordingly, the judgment passed by the Reference Court

dated 17.06.2015 in LAC No.6/2007 is hereby modified to the extend of compensation for fruit bearing and forest trees by holding that respondent nos. 1 to 4 are entitled for compensation of Rs. 4,16,500/-.

29. The appellant to deposit the enhanced amount of compensation within a period of three weeks from today either with this Court or before the Reference Court along with the all statutory benefits.

30. After depositing the same, the claimants are at liberty to withdraw the same.

31. Rest of the Award passed by the Reference Court stands confirmed.

32. The First Appeal stands disposed of accordingly.

(PRAVIN S. PATIL, J.)

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