



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

FIRST APPEAL NO.794 OF 2014

Shri Naresh s/o Santosh Bhaiswar, aged 40
years, Occ. Service, R/o Kalmeshwar, Tq.
Katol, Dist. Nagpur.

... APPELLANT

VERSUS

1. State of Maharashtra, through Collector,
Nagpur.
2. Special Land Acquisition Officer, Minor
Irrigation Work, Nagpur.
3. Vidarbha Irrigation Development
Corporation, through its Executive
Engineer, Medium Project Division, Civil
Lines, Nagpur.

... RESPONDENTS

Dr, Renuka S. Sirpurkar, Advocate for the appellant.
Shri Uday A. Gosavi, Advocate for respondent no.3.
Shri H.D. Futane, Assistant Government Pleader for the State.

CORAM : PRAVIN S. PATIL, J.

CLOSED ON : 12.09.2025

PRONOUNCED ON : 24.09.2025.

JUDGMENT :

1. Heard the learned Counsel appearing for the parties.

2. By this appeal, the appellant is challenging the judgment and Award passed by the Reference Court in Land Acquisition case No.93/2001 stating that the compensation awarded in the Reference proceedings is not adequate, and more particularly, the calculations towards to fruit bearing trees and forest tress are not properly considered in the matter. Hence, the appellant is before this Court for challenging the Award passed by the Reference Court.

3. Undisputedly, the Notification under Section 4 of the Land Acquisition Act was published in Government Gazette on 21.03.1998 and Notification under Section 6 was published on 14.01.1999 for the purpose of Chikhali Nala project through Special Land Acquisition Officer, Nagpur. The land 0.66 HR out of Survey no.228/2 Mouza Mendki P.H. No.20, Tq. Katol, District Nagpur ownand possesses by the appellant was acquired for the said project. As per the final Award, the Land Acquisition Officer ('LAO') granted compensation at the rate of Rs.43,500/- to 63,500/- per Hector.

4. Against the Award of LAO, the Reference was preferred by the appellant and Reference Proceedings was registered as Land Acquisition Case No.93/2001. In the Reference proceeding, the Reference Court enhanced the compensation at the rate of Rs.64,000/-

per Hecter for the land ad-measuring area 0.66 HR out of Survey No.228/2 of Mouza Mendki, Tq. Katol, District, Nagpur. In respect of fruit bearing trees, the compensation was granted at the rate of Rs.5,000/- per tree.

5. By the present appeal, the submission of the appellant is that though the amount of compensation towards the trees is correct but there is no proper calculation of the number of trees by the Reference Court and therefore, to that extent, the present appeal is filed before this Court.

6. It is pointed out by the appellant that in support of his claim for enhancement of compensation in Reference proceedings, the evidence of appellant was recorded. The appellant was not cross-examined by the respondent, and therefore, his evidence remain unchallenged. It is stated that the appellant has established on record that there were total 150 orange and Mosambi trees and 26 forest and 1 teak trees. Hence according to the appellant, there were total 177 trees but the compensation was granted only for 56 trees. The appellant has brought on record the evidence of Valuer namely Dadan Borkar, who has personally visited the agricultural field on 25.03.1998 and as per his evidence and report submitted on record, it is clear that

there were total 177 trees, but said evidence is discarded by the Reference Court in the matter. Hence, on this count, it is prayed that judgment and order of the Reference Court requires modification towards the number of trees in the matter.

7. Learned Counsel for the respondent no.3 stated that VIDC being the Acquiring Body ought to have been made party while filing of the Reference Proceedings. However, the Acquiring Body was not made party. This Court vide order dated 02.08.2021 directed the appellant to add the Acquiring Body as a party respondent no.3 to the present proceedings. Accordingly, respondent no.3 added party in present appeal by order dated 02.08.2021. Hence, it is the contention of the respondent no. 3 that there was no reason for the Acquiring Body to contest the Reference proceedings before the Trial Court and stated that from the documents placed on record and the evidence laid by the appellant his submission be considered in the matter.

8. In the present appeal, from Joint Measurement Report (JMR) (Exhibit 19) it is stated that there were 50 mosambi trees of 3 years of age. There is no mention of another trees. In view of non-inclusion of the trees, the appellant on 07.11.1998 raised protest petition before the Special Land Acquisition Officer, Minor Irrigation

Department, Nagpur (Exhibit 24) thereby stating that in the agricultural field there are 105 big mango trees, 138 Mosambi trees, 20 Babhul and 11 teak trees.

9. In view of protest petition, the another JMR was prepared in the matter. As per the data of this JMR, which was prepared on 15.06.1999, under the column "In addition to the earlier joint measurement" it is recorded that in the agricultural field of the appellant there were 26 forest trees and 47 fruit bearing trees.

10. After JMR dated 15.06.1999 no objection was raised by the appellant and accordingly, the Reference proceedings was filed before the Civil Court through the Collector. In the Reference Court, the appellant has stated that there were 150 fruit bearing trees and 26 forest trees and 1 teak tree.

11. On the basis of this submission, the evidence was recorded before the Reference Court by the present appellant. Admittedly, the appellant was not cross-examined by the respondent. So also, the Valuer who was examined by the appellant was also not cross-examined by the present respondent. Accordingly, it is submission of the appellant that unchallenged evidence was required to be accepted as it is in the matter and therefore, the conclusion drawn by the Reference court

whereby calculation of trees was shows only 57 fruit bearing trees, is contrary to the facts established on record.

12. In support of the submission, the learned Counsel for the appellant has relied upon the judgment of this Court in First Appeal Nos.453/10, 1628/2008, 114/2011, 96/2012.

13. Learned Counsel appearing for respondent no. 3 pointed out certain factual aspect of the matter. According to him, it is admitted fact that no evidence was recorded by the Acquiring Body nor the witnesses of the appellant were cross-examined. The calculation of the trees can be done from the documents, which are available on record. According to him, the appellant himself has raised an objection to the first JMR (Exhibit 19) and after the objection raised by the appellant, new JMR was conducted and its report dated 15.06.1999 (Exhibit 20) is available on record.

14. Bare perusal of the same, shows that there were only 47 fruit bearing trees and 26 were forest trees. Hence, considering these document available on record, it is crystal clear that objection raised vide Exhibit 24 was at that time came to be decided by the authorities. Therefore, the appellant cannot be permitted to rely on his oral evidence which is contrary to record and more particularly when the

said witnesses were not cross-examined.

15. It is further pointed out to me from the record that the Exhibit 10 i.e. 7/12 extract of the agricultural field of the year 1997-98. From the same, it is seen that there were 60 orange trees are recorded and no mention of other trees. According to him this 7/12 extract is crucial document as same is prepared by Revenue Officer and record about crops, soil type, land area, agricultural activities etc.

16. According to respondent no.3 as per the deposition of Valuer, he has visited the agricultural field on 25.03.1998 and submitted his report (Exhibit 29). But, on that day, he was not approved Valuer because the Institute of Valuers granted him the certificate subsequently i.e. 11.11.2000. It is further pointed out from Exhibit 32 that while moving application by the Valuer to the Institute of Valuers on 25.07.2000, it was made clear to him that he can carry on valuation of the land only in the category of Fellow Valuer and not allowed to designate himself as a Valuer or approved Valuer. It is made clear that he cannot practice as independent Valuer. He was only allowed to work as Assistant under the Corporate Valuer. Hence, it is stated that the valuation done by the Dadan Borkar cannot be said to be a conclusive proof in the matter.

17. Respondent no.3 relied upon the judgment of this Court in *First Appeal No.285/2022 (VIDC vs. Dnyaneshwar Sadashiv Nagpure) dated 21.04.2025* and judgment of the Hon'ble Supreme Court in the cases of *Executive Engineer, Minor Irrigation Works, Jalgaon vs. Vitthal Damodar Patil and anr. (1999) 7 SCC 280* and *State of H.P. vs. Jai Lal and ors. (1999) 7 SCC 280*.

18. In the light of submission made by both the parties, I have perused the record and considered the submission.

19. At the outset, the appellant has relied upon the decision of this Court in the First Appeal No.453/2010 wherein the evidence of Dadan Borkar was considered as a Horticulture Expert. The appellant pointed out that in First Appeal no. 96/2012 again the valuation report of Dadan Borkar was considered by this Court. Hence, it is the submission of the appellant that there is no reason to disbelieve the valuation report and the number of trees as stated by the Valuer.

20. *Per contra*, learned Counsel for respondent no. 3 has pointed out from the First Appeal No.285/2022 decided by this Court which has thoroughly considered the aspect as to how and in which manner the report of the Valuer is to give weightage in the matter. The relevant paragraphs 34 and 35 of the said judgment reads thus :

“34. The Hon’ble Supreme Court has held in the matter of Sidappa (supra) that before placing reliance on the Valuation Report of his Valuer the Court must satisfy itself that the opinion formed by the Valuer is on the basis of relevant factual data or material. Such material is required to be produced before the Court. The material must be proved to be genuine and reliable as any other evidence. The Court must be satisfied with respect to authenticity and reliability of the material on which the expert relies. It is held that the Court must examine the data or the material, on the basis of which, the Valuation Report is prepared before placing reliance on the Valuation Report. Similar view is taken in the matter of Jailal (supra). It is held that an expert is not a witness of facts and his evidence is only advisory in nature. The Court may seek guidance from the opinion of the expert. However, the conclusions drawn by the expert are not binding. The opinion must be based on relevant material and it is open for the Court as to whether the opinion is given on the basis of any relevant material to support the observation/ findings/conclusions arrived at by the expert.

36. In the matter of Narayanlal (supra) it is held that even in the absence of proper cross-examination of an expert in land acquisition cases, the Court must exercise due care and caution in placing reliance on the evidence of expert. It is the duty of the Court to examine whether the opinion of expert inspires confidence, having regard to the material, on which the opinion is based and the principles of which opinion is formed. This Court has referred to the Judgment of the Hon’ble Supreme Court in the matter of P. Ram Reddy and Others V/s Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad and Others,⁹ wherein it is held that ineffective cross- examination of the witness is a common feature in land acquisition cases. Having regard to the manner, in which land acquisition cases are defended by the State, it is held that the evidence of witnesses in land acquisition cases cannot be accepted simply because there is no effective cross-examination or evidence in rebuttal is not led by the State. The evidence of witnesses examined by the land owners must be evaluated on broad probabilities. It is

held that it is the duty of the Court to prevent public money being fleeced only because of failure on the part of State to contest land acquisition cases properly.”

21. Coincidentally, this Court while deciding the First Appeal No.285/2025, the report of same Valuer i.e. Dadan Borkar was under consideration before this Court. This Court has specifically recorded the finding about the manner in which the valuation was done in that case by Dadan Borkar. The Court recorded the finding on the report of the Valuer i.e. Dadan Borkar that report does not inspire confidence and his valuation report was discarded in the matter.

22. It is further pertinent to note that in respect of consideration of valuation report, the law is well settled as held by the Hon'ble Supreme Court in the case of *State of H.P. vs. Jai Lal (Supra)*, wherein in paragraph 18 and 19 observed thus :

“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.

19. The report submitted by an expert does not go in evidence automatically. He is to be examined as a witness in

court and has to face cross-examination. This Court in the case of Hazi Mohammad Ekramul Haq v. State of W.B. AIR 1959 SC 488 concurred with the finding of the High Court in not placing any reliance upon the evidence of an expert witness on the ground that his evidence was merely an opinion unsupported by any reasons.”

23. In case of ***P.Ram Reddy and ors. vs. Land Acquisition Officer, Hyderabad and ors. 1995(2) SCC 305***, the Hon’ble Supreme Court has observed in paragraphs 15 and 16 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.”

24. In the light of law laid down by the Hon'ble Supreme Court, it becomes necessary to consider the evidence of Valuer in the matter. According to me, from the perusal of the record and submission made

by the respondent no.3, *prima facie*, it is clear that the Valuer namely Dadan Borkar was not approved Valuer at the time of preparing the JMR in the matter. However, he wrongly stated that at the time of valuation of land, he was approved valuer. He has not given the details of scientific valuation and method he has applied to count the trees. It is not stated along with him who were present in the field at the time of valuation. Hence, evidence of this witness, do not found trustworthy.

25. The record shows that the appellant immediately after the 1st JMR (Exhibit 19) has raised objection vide Exhibit 24. Bare perusal of the objection shows that he has stated the number of trees in excess. This fact is fortified because in the second JMR (Exhibit 20), the proper valuation is done, and accordingly, it is found that there are 26 forest trees and 47 fruit bearing trees. This document is not disputed in the matter. Hence, considering the fact of the present appeal, I do not find any perversity or illegality in the findings recorded by the learned Reference Court while deciding the reference proceedings.

26. According to me, the calculation towards the trees in respect of fruit bearing trees is found to be correct in the matter, and therefore, finding in this regard, requires no interference. Only the Reference Court has not considered the compensation towards the forest trees while awarding the compensation. From the 2nd JMR

(Exhibit 20), it is clear that in addition to the fruit bearing trees there were forest trees are also recorded which were available in the agricultural field of the appellant. Hence, the appellant is entitled for additional compensation for the forest trees in the matter.

27. Accordingly, the First Appeal is partly allowed.

28. The judgment passed by the Reference Court dated 11.09.2012 in L.A.C. No.93/2001 is partly modified. It is held that in addition to fruit bearing, the appellant is entitled for compensation of Rs.15,000/- towards entire forest trees and Rs.5,000/- towards one teak tree, as claimed in the reference application.

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

30. The First Appeal stands disposed of accordingly.

(PRAVIN S. PATIL, J.)

Trupti