
(2022) 10 BOM CK 0053

In the Bombay High Court

Case No : First Appeal No. 318 Of 2017, Cross Objection No. 30 Of 2021

Executive Engineer, Lower Wardha

APPELLANT

Vs

Manik Shamrao Chore And Others

RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 4(1), 18, 54

Citation : (2022) 10 BOM CK 0053

Hon'ble Judges : Abhay Ahuja, J

Bench : Single Bench

Advocate : Abhijeet Parihar, Anoopsingh Parihar, C.R. Najbile, M.A.Kadu

Final Decision : Disposed Of

Judgement

Abhay Ahuja, J

1. This is an appeal filed under Section 54 of the Land Acquisition Act, 1894, (for short 'the said Act'), challenging judgment dated 05.02.2015, passed by the 2nd Joint Civil Judge Senior Division, Wardha, in reference under Section 18 of the said Act, in LAC No.125/2008.

(2) The lands in question are the lands under Survey No.456 of an area of 3.83 hectares and Survey No.497 of an area of 0.40 hectare of Mouza – Wathoda, Tahsil – Arvi, District – Wardha, which were compulsorily acquired by the State Government for submergence of the Lower Wardha Project, Wardha, vide notification dated 03.02.1999 under Section 4 (1) of the said Act. There was a well and 350 orange trees in Survey No.456. The Special Land Acquisition Officer vide Award dated 29.04.2003 has determined the value of land under Survey No.456 @ Rs.59,562/- per hectare and paid Rs.3,08,845/- for land, Rs.6,795/- for five Ber trees and Rs.1,022/- for forest trees, totalling to Rs.3,16,662/-. The valuation of Survey No.497 was determined @ Rs.62,422/- per hectare and Rs.24,969/- was paid for the land and Rs.1,024/- was paid for the forest trees, totalling to Rs.25,993/- in addition to statutory benefits.

(3) It is not in dispute that there are 350 orange trees, and a well in Survey No.456 and that the land is perennially irrigated land. The Survey No.456, on which 350 orange trees are present, is also considered to be orchard land.

(4) The case of the claimant is that the said land was the basis of his income source. Being aggrieved that the acquiring body awarded a meager compensation and also failed to consider the real market value of the land, orange trees and the location of the land, he filed a reference before the 2nd Joint Civil Judge Senior Division, Wardha, but received the amount of compensation as granted by the Special Land Acquisition Officer on 14.06.2005, under protest. The claim made before the reference Court was that the land be valued @ Rs.2,50,000/- per hectare and each orange tree be valued @ Rs.10,000/- in addition to Rs.2,00,000/- for the well. The total enhanced compensation claimed was Rs.42,00,000/-. The acquiring body denied the valuation of the land as claimed by the applicant and submitted that the Land Acquisition Officer had determined the compensation of the land after considering the ready reckoner in respect of the price, value, location and other relevant factors. It was also submitted that the claimant had received the amount of compensation and as such, was not entitled to file the reference for enhancement of compensation.

(5) The Reference Court has held that the lands acquired under Survey Nos.456 and 497 are perennially irrigated lands. That claimant is irrigating the said lands through a well situated in Survey No.456. Although, there is no dispute that there are 350 Orange trees in Survey No.456, by virtue of which the Reference Court has held that the land in Survey No.456 is an orchard land, however, it has been observed that only 150 orange trees are fruit bearing trees and the remaining 200 Orange plants were only one year old. The Reference Court went on to rely upon the decisions of the Supreme Court on settled principles with respect to valuation and examined the case at hand for determining the market value of the acquired lands. The Reference Court has categorically observed that neither the applicants nor the non-applicants have produced any of the sale instances of land in Village Wathoda. It relied on the sale instances with respect to Mouza Borgaon at Exh.24 and in respect of Mouza Tona at Exh.25 holding that there was no record to show that potentiality of the lands in respect of said two instances was any different than that of dry crop land at Mouza Wathoda in respect of which village the subject acquisition has taken place. It held that these two sale instances with respect to Survey No.16 of Mouza Tona and Survey No.19 of Mouza Borgaon were a good guide for determination of the value of the acquired land. It was also observed that although Survey No.456 was an orchard land as there was no sale instance of the orchard land available on record, therefore, it would be proper to determine the value on the basis of income from the fruit bearing trees. The Reference Court calculated the value of each of the 150 orange trees at Rs.3,950/- per tree. After a detailed analysis that as per the sale instances of Mouza Tona and Borgaon villages on the date of notification under Section 4 of the Land Acquisition Act i.e. on 03/02/1999, the market price

of the dry land was Rs.1,24,000/- per hectare, however, since the lands acquired were perennially irrigated, the Reference Court held that the acquired lands would have double the value than the dry crop land i.e. Rs.2,48,000/- per hectare.

(6) Accordingly, the value 3.13 hectare land of Survey No.456 was held to be Rs.7,76,240/- and value of 0.40 HR of land of Survey No.497 was held to be Rs.99,200/- and the Reference Court enhanced the compensation by Rs.11,49,126/- in respect of both the Survey Nos.456 and 497 of Mouza – Wathoda, in addition to the statutory benefits and interest. However, it was observed by the Reference Court that there was no evidence about the inadequate compensation with respect to the forest and Ber trees and therefore, there was no enhancement in that regard.

(7) Aggrieved by the same, the acquiring body - VIDC as well as the land owners have respectively filed the appeal as well as the cross objection in the matter.

(8) Mr. Parihar, learned counsel for the acquiring body submits that the Reference Court has enhanced the amount of compensation without there being any sufficient evidence on record to support the same. He submits that the compensation granted by the Land Acquisition Officer was after considering the various sale instances on record and the same was appropriately determined. He submits that as regards the fruit bearing trees the reference Court had rightly discarded the report of the valuer.

(9) Learned counsel has submitted that in the absence of any substantial evidence to sustain the enhancement in the market value of the land, the impugned judgment was liable to be set aside and the Award passed by the Land Acquisition Officer ought to be upheld/restored.

(10) Mr. Najbile, learned counsel for the claimant/cross objector has submitted that his cross objection is only limited to the extent of the inadequate compensation with respect to the 150 orange trees. Learned counsel has drawn attention of this Court to the following decisions in support:

(i) The decision of the Apex Court in D.Eswara Vs. Special Deputy Collector, (2019) 13 SCC 785.

(ii) Judgment dated 17th March, 2022 of this Court in the case of Executive Engineer, Lower Wardha Project, Wardha Vs. Shantabai wd/o Dadaraoji Kale and Ors. FA No. 939/2017 along with Cross-Objection No.23/18 and

(iii) Judgment dated 3rd August, 2022 of this Court in the case of Anil s/o Namdeo Khonde Vs. The State of Maharashtra and Ors., in First Appeal No.54/2022

(11) He submits that the Hon'ble Supreme Court has emphasized that similarly situated persons covered by the very same notification may not be discriminated. He would further submit that this Court after considering the arguments of the

acquiring body as well as the claimants have in an almost identical case with respect to the same notification under Section 4 dated 03.02.1999 and with respect to the same project, held that the claimants are entitled to an amount of Rs.6,311/- per orange tree. He would therefore, submit that on the principle of parity, the same treatment be given to the claimants herein.

(12) I have heard the learned counsel for the parties and with their able assistance I have perused the papers and proceedings in the matter.

(13) Paragraph 5 of the decision of the Hon'ble Supreme Court in the case of D.Eswara Vs. Special Deputy Collector, (2019) 13 SCC 785, is usefully quoted as under :

"Needless to say that in case similarly situated persons covered by the very same notification have been granted compensation @ Rs.4,000/- per lemon tree, the petitioners herein may not be discriminated on the ground of delay. However, in the event of grant of enhancement, they shall not be entitled for interest for the period of delay." (emphasis supplied)

(14) The land acquired in the present case is pursuant to notification dated 03.02.1999 under Section 4(1) of the said Act. The claimant's land under Survey No.456 of an area of 3.83 hectare and under Survey No.497 of an area of 0.40 hectare of Mouza – Wathoda has been compulsorily acquired by the State Government for submergence of the Lower Wardha Project, Wardha. It is also not in dispute that there is a clear finding that the acquired land is perennially irrigated land for which an amount of Rs.2,48,000/- per hectare has been granted by the reference Court. In fact, the decision dated 17.03.2022 of a Division Bench (CORAM : A.S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ) of this Court in the case of Executive Engineer, Lower Wardha Project, Wardha Vs. Shantabai wd/o Dadaraoji Kale and others (supra), is with respect to land acquired for the same project in the same village as well as under the same notification, has upheld the rate of Rs.2,48,000/- per hectare. Paragraph 6 of the said decision is usefully quoted as under :

"6. We have heard the learned counsel for the parties and with their assistance we have also perused the records of the case. The land acquired in the present acquisition proceedings admeasures 5 Hectare 67 R. The Reference Court recorded a finding that land bearing Survey No.460 was perennially irrigated and in view of the adjudication in Land Acquisition Case No.55 of 2008 which pertained to semi-irrigated land wherein amount of Rs.1,50,000/- per hectare was granted, for land from Survey No.460/1 amount of Rs.2,20,000/- per hectare was granted. It is further not in dispute that in First Appeal No.266 of 2017 along with Cross Objection No.71 of 2018 decided on 08.08.2019 an amount of Rs.2,48,000/- per hectare was granted for the land from the same village as acquired under the same notification. Since the aforesaid amount has been granted by this Court it would not be justified to reduce the market value for the acquired land from what was granted by the Reference Court. As stated

above, the Reference Court had granted compensation of Rs.2,20,000/-per hectare for the present land and hence in absence of any prayer for enhancement in the cross objection, this rate for the land is liable to be maintained.” (emphasis supplied)

(15) With respect to the compensation for orange trees, this Court again in the aforesaid case of Executive Engineer, Lower Wardha Project, Wardha Vs. Shantabai wd/o Dadaraoji Kale and others (supra), after considering the various similar proceedings where the orange trees in the same village having been valued @ Rs. 6,311/- per orange tree, has observed that the rate of Rs.4885.65 for each orange tree granted by the Reference Court would have to be enhanced to Rs.6,311/- per orange tree.

(16) Also a Single Judge of this Court (Coram : N.W. Sambre, J) has in a similar matter, in the case of Anil s/o Namdeo Khonde Vs. The State of Maharashtra and Ors. (supra) with respect tot he same notification allowed the appeal of a claimant holding that the appellant is entitled for enhanced compensation for orange trees @Rs.6,311/- per orange tree. Paragraph 9 of the said decision is usefully quoted as under:

“9. The Division Bench was sensitive to the valuation report in the said matters. The Division Bench then proceeded to award the enhanced compensation. Similar appears to be the case in hand. The claim in the present appeal is restricted only to the extent of the award of compensation for the orange trees, which in my opinion, deserves to be granted at the rate of Rs.6,311/-per orange trees.”(emphasis supplied)

(17) As noted above, the Cross Objector has limited his claim to the denial of enhanced compensation with respect to the 150 orange trees only. The Apex Court as set out above, has laid stress on parity between similarly situated persons covered by the same notification. It is not in dispute that the decisions of this Court in the case of Executive Engineer, Lower Wardha Project Vs. Shantabai wd/o Dadaraoji Kale and others (supra) as well as in the case of Anil s/o Namdeo Khonde Vs. The State of Maharashtra and Ors., (supra) are not only in respect of the same notification dated 03.02.1999, under Section 4(1) of the said Act, as in the case at hand, but also in respect of the land acquired in the same village Wathoda for the submergence of the Lower Wardha Proejct. As such, the 150 orange trees in question situated on the acquired land deserve similar treatment and cannot be discriminated. The cross objector is therefore, entitled to enhanced compensation for the 150 orange trees @ Rs.6,311/- per orange tree.

(18) With respect to lands under Survey No.456 and 497, acquired for the project, no interference is called for to the rate of Rs.2,48,000/- per hectare awarded by the Reference Court as undisputedly the lands are perennially irrigated lands. Moreover, the Division Bench of this Court in the case of Executive Engineer, Lower Wradha Project, Wardha Vs. Shantabai wd/o Dadaraoji

Kale and others (supra) has referred to the decision of this Court in First Appeal No.266/2017 along with Cross Objection No.71/2018, decided on 08.08.2019 where an amount of Rs.2,48,000/- per hectare was granted for the land from the same village as acquired under the same notification. Therefore, the same rate is liable to be maintained herein as well. As regards the compensation for other fruit bearing trees, as held by this Court in the case of Executive Engineer, Lower Wardha Project Vs. Shantabai wd/o Dadaraoji Kale and others (supra), I do not find any scope to reduce the compensation granted for the same in the absence of any supporting evidence. As far as the valuation with respect to the well on part of the land acquired for the project is concerned, I agree with the Reference Court that as the lands are considered as Orchard and perennially irrigated land, no separate compensation is to be paid for the well.

(19) In view of the above discussion, the judgment of the reference Court dated 05.02.2015 is hereby modified to the extent that with respect to the 150 orange trees, on land bearing Survey No. 456, the claimant be paid a compensation amount @ Rs.6,311/- per orange tree.

(20) The acquiring body to act accordingly and deposit the amount of enhanced compensation along with statutory benefits in line with the aforesaid order within a period of six weeks.

(21) The first appeal and the cross objection are disposed in the above terms. No costs.

(22) Pending application(s), if any, accordingly stand(s) disposed.