

(2020) 02 BOM CK 0127
In the Bombay High Court
Case No : First Appeal No. 280 Of 2019

Narayan Yashwanta Kapse

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 25-02-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 11, 18, 23(2), 23(1A), 28, 34, 54
Evidence Act, 1872 — Section 45, 60, 61

Citation : (2020) 02 BOM CK 0127

Hon'ble Judges : K.K. Sonawane, J

Bench : Single Bench

Advocate : D.A. Bide, V.B. Wayal, P.M. Kulkarni

Final Decision : Disposed Of

Judgement

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1. Admit. The matter is taken up for finality on merit with consent of both sides.,,,,,,

2. The instant appeal calls-in-question the quantum of compensation amount determined by the learned Reference Court, Aurangabad, in LAR No." ,,,,,,

136 of 2006 filed by the appellant-original claimant under Section 18 of the Land Acquisition Act, 1894 (for short "Act of 1894")." ,,,,,,

3. The factual aspects relevant to the present appeal in brief are that the agricultural lands Gut Nos. 171, 172, 190 and 191 admeasuring 00.46 R," ,,,,,,

00.81R, 00.43 R and 00.92 R respectively of the appellant-claimant located at village Leha (Jahagir) Taluka Phulambri, District Aurangabad were" ,,,,,,

placed under acquisition for submergence area of Wakod medium project. The notification under section 4(1) of the Act of 1894 was published in the ,,,,,,

official Gazette on 13-02-1997. After compliance of procedural formalities, the

SLAO, proceeded to make award as contemplated under Section 11 of" ,,,,,

Act of 1894. The appellant-claimant did not accept the price determined by the Special Land Acquisition Officer (â??SLAOâ?) for his acquired ,,,,,

lands, fruit bearing trees and other improvement carried out in the field. Therefore, he accepted the compensation amount offered by the SLAO under" ,,,,,

protest and filed the Reference petition under Section 18 of Act of 1894 for indulgence of the Court to determine the just and reasonable market value ,,,,,

of the lands under acquisition. The learned Reference Court dealt with the Reference petition of appellant-claimant and on appreciation of entire oral ,,,,,

and documentary evidence adduced on record partly allowed the Reference Petition and agreed to enhance the market price of acquired lands from ,,,,,

Rs.494 per R calculated by SLAO to market price @ Rs. 2100/- per R. But, the learned Reference Court found reluctant to allow any enhancement" ,,,,,

in the valuation of fruit bearing trees as well as the improvements carried out in the lands. Therefore, the claim of appellant - claimant for" ,,,,,

enhancement of compensation for fruit bearing trees, improvement etc. was rejected by the learned Reference Court. Being aggrieved by refusal of" ,,,,,

learned Reference Court to enhance the compensation for fruit bearing trees, improvements etc. and also the improper determination of market price" ,,,,,

of acquired lands, the appellant-claimant rushed to this Court and preferred the present appeal under Section 54 of the Act of 1894 for redressal." ,,,,,

4. The learned counsel appearing for appellant-claimant, at the threshold, fairly conceded that the appellant-claimant has no any grievance about the" ,,,,,

market price of acquired lands fixed by the learned Reference Court. However, the appellant-claimant has strong objection in regard to the mode and" ,,,,,

manner in which the learned Reference Court dealt with the evidence of horticulturist, who was the expert in the agriculture field. The PW-2 Dr. Patil" ,,,,,

was the Government approved valuer, having requisite educational qualification. He visited to the lands of the claimants under acquisition and carried" ,,,,,

out the inspection. He prepared the valuation report of fruit bearing trees as per norms prescribed by the Government. The learned Reference Court ,,,,,

ought to have appreciated the evidence of experts for determination of value of acquired trees. The learned counsel for appellant harped on the ,,,,,

circumstances that the learned Reference Court did not consider the evidence on record in proper manner. The findings expressed by the learned ,,,,,

Reference Court for discarding the evidence of experts are erroneous, illegal and based on misinterpretation of provisions of law. According to",,,,,,

learned counsel, there was no dispute about the existence of trees and its number in the acquired land. The SLAO granted the compensation for trees",,,,,,

as well as improvements in the lands. The number of trees in existence in the acquired land were also reflected in the report of joint measurement and,,,,,

spot inspection carried out by the Government Personnel. The learned counsel for appellant fervidly submits that the respondent-State has acquired,,,,,

the lands and various trees, thatched huts, cattle shed etc. for medium irrigation project.",,,,,

Therefore, the just and reasonable compensation is essential to be received to the appellant-claimant for the loss caused to him due to compulsory",,,,,,

acquisition proceeding.,,,,,,

5. Before embarking into the merits of the matter, it is to be noted that the learned counsel for the appellant-claimant did not address to the issue of",,,,,,

market price of acquired lands in this case during the course of his argument. In contrast, he fairly conceded that the appellant-claimant has no any",,,,,,

grievances about the market rate of acquired land assessed by the learned Reference Court. Therefore, there is no any propriety to delve into the",,,,,,

issue of market price of acquired lands fixed by the learned Reference Court.,,,,,,

6. Now, the crucial point remained to be ponder over is in regard to price-money to be paid to the appellant-claimant for his acquired trees, thatched",,,,,,

hut, cattle-shed etc. It was not put into controversy that the impugned award made by SLAO under Section 11 of Act of 1894, contains a document of",,,,,,

comparative chart showing the types of trees, its number and valuation as per report of joint measurement as well as after spot inspection of acquired",,,,,,

land. The document of comparative chart was the part and parcel of the Award of SLAO. It reveals from the document that there were fruit bearing,,,,,

trees - Jambhul-10, Guava-6, Mango-5, Ber-50 and Coconut-5 in the land Gut No. 171 of appellant-Claimant. There were only 65 Chiku trees under",,,,,,

acquisition in the land Gut No. 191. The appellant-claimant has claimed the enhancement of compensation for all these aforesaid trees. It transpired,,,,,

that there would not be any dispute about number of trees and its existence in the acquired land. The SLAO also determine the valuation of these,,,,,

trees but claimant did not accept the same and learned Reference Court also

turned-down his claim, which is the subject-matter of present appeal." ,,,,,

The point of controversy required to be resolved by calculation of just and proper valuation of fruit bearing trees under acquisition.,,,,,

7. The appellant-claimant in support of his evidence examined the valuer Dr. V. K. Patil at (Exhibit-16). He was the Government approved valuer. He ,,,,,

produced the relevant documents of his educational and professional qualification and certificates etc. (Exhibits- 17 to 20) on record. It is in his ,,,,,

evidence that he had visited to the orchard of appellant-claimant at his instance. He personally carried out the inspection of fruit bearing trees, which" ,,,,,

were seen standing in the land under acquisition. He reduced into writing the details of inspection of trees in presence of panchas as well as other ,,,,,

resident of the village. He has given detail particulars of number of trees, its age, height, stem girth, general condition, production capacity, etc. He" ,,,,,

deposed that he prepared the valuation report of the fruit bearing trees located in the acquired lands as per guidelines issued by Government of ,,,,,

Maharashtra under Government Resolution No. HOR 1090/381/4 dated 27th December, 1990. His valuation report was also based on the A. E." ,,,,,

Miramâ??s real property Table method of valuation approved by the Government Department. He produced and proved the relevant documents of ,,,,,

requisition letter of claimant (Exhibit-42), Inspection report, valuation report, certificates etc. (Exhibits-28 and 43 to 47)." ,,,,,

8. The claimant also adduced the evidence of Shri Babulal Bankar (Exhibit-41), he was the panch witness and resident of village Leha (Jahagir) of" ,,,,,

appellant-claimant. His evidence fortify the version of Dr. Patil, horticulturist about his visit to the orchard of claimant for inspection of standing trees" ,,,,,

in the lands under acquisition and its valuation report.,,,,,

9. The learned Reference Court found reluctant to act upon the evidence of horticulture experts Dr. Patil in this case. The learned Reference Court ,,,,,

while discarding the evidence of expert witness Dr. Patil recorded the findings in para No. 14 of the impugned Judgment, which would be reproduced" ,,,,,

as below - ,,,,,

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â??â??14. . ,,,,,

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51,,,,,

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60 . ,,,,,

Sr. No.,Acquired Land/Fruit bearing Trees,,,Valuation of Trees as per,
,Gat No.,Type of Trees,Number of Trees,Valuation Report of valuer Dr.Patil
(Exhibit-47),Court [i.e. 80 % of the Valuation Report (Exhibit-47)]

1,171,Mango,5,150225.25,120180.2

2,,Ber,50,49190.75,39352.6

3,,Guava,6,24651.89,19721.51

4,,Jambhul,10,91405.95,73124.76

5,,Coconut,5,37286.45,29829.16

6,191,Chiku,65,816165.35,652932.28

Total compensation awarded,,,,,1168925.64,935140.51

[Rs. 11,68,925.64 Ps. * 80 / 100 = Rs.9,35,140.51 Ps.]",,,,,

(b) The claim for enhancement of compensation for fruit bearing trees under
acquisition stands partly allowed. The appellant-claimant is entitled to,,,,,

receive compensation for fruit bearing trees located in lands Gut No. 171 and
191 to the tune of Rs. 9,35,140.51 Ps. The compensation amount, if any,",,,,,

paid to the appellant-claimant towards fruit bearing trees be deducted from the
compensation amount allowed to be enhanced for fruit bearing trees.,,,,,,

(c) The appellant-claimant is also entitled to receive statutory benefit as
contemplated under Section 23(1-A) and 23(2) of the Act of 1894 on the,,,,,

aforesaid enhanced compensation amount.,,,,,,

(d) In addition, the appellant - claimant will be entitled to get interest as
prescribed under Section 28 and 34 of the Act of 1894 on the enhanced",,,,,,

compensation amount.,,,,,,

16. Accordingly, the First Appeal stands disposed of in above terms. No order as
to costs." ,,,,,