
(2021) 12 BOM CK 0019
In the Bombay High Court
Case No : First Appeal No. 442 Of 2011

Pramod S/O Sadashiv Khodke	Vs	APPELLANT
State Of Maharashtra And Others		RESPONDENT

Date of Decision : 04-12-2021

Acts Referred:

Land Acquisition Act, 1894 — Section 3(a), 4, 6

Citation : (2021) 12 BOM CK 0019

Hon'ble Judges : A.S. Chandurkar, J;G.A. Sanap, J

Bench : Division Bench

Advocate : R.S. Nagpure, Sangita Jachak, M.A. Kadu

Final Decision : Disposed Of

Judgement

G.A. Sanap, J

1. The appellant being aggrieved by the judgment and award dated 24.11.2008 passed in LAC No.738/2006 has come before this Court in appeal. The learned Joint Civil Judge, Senior Division, Yavatmal (Reference Court) had partly allowed the reference filed by the appellant and awarded the enhanced compensation of Rs.33,68,720/-.

2. The facts leading to the filing of the appeal are as follows:-

The appellant was the owner of the land bearing Gat No.82 area 4.31 H.R situated at village Mouja Kohli, Taluka Babhulgao, District Yavatmal. The said land was acquired by the respondents for Bembla Project vide LAC No.2/47/2002-03. The notification, was published on 5.06.2003, under Section 4 of the Land Acquisition Act, 1894 (herein after referred to as 'the Act of 1894'), followed by notification under Section 6 of the Act of 1894 dated 22.09.2005. The award came to be passed on 22.09.2005 and total compensation of Rs.20,29,256/- was awarded for the agriculture land and for fruit bearing trees. The appellant accepted the compensation under protest.

3. According to the appellant, the compensation awarded for the land and fruit bearing trees was meager, inadequate and insufficient. It is the case of the appellant that the factors such as fertility of the soil, prominent and advantageous location of the land, potential for commercial crops, actual market value, age and condition of trees and other relevant factors need to be considered while quantifying the compensation. The market value of the land in question was required to be determined by making thorough inquiry. There must be legally admissible evidence and scientific material to quantify the compensation of such land with fruit bearing trees. The comparable sale instances and the yearly income needs to be evaluated. The land of the appellant was irrigated land. The appellant had planted the fruit trees of different varieties. The age of the same on the date of notification under Section 4, was 9 years. The Land Acquisition Officer has not taken the above facts and circumstances into consideration while quantifying the compensation of the land and the fruit bearing trees. The appellant therefore, made a reference and claimed enhanced compensation of Rs.20,34,333/- being the market value of the land and Rs.5,46,20,000/- being the value of the fruit bearing trees.

4. The respondents opposed the reference. The respondents denied the material facts pleaded by the appellant in the reference. According to the respondents, the Land Acquisition Officer had granted opportunity of hearing to the appellant to substantiate his claim. The claim put forth by the appellant, at the stage of inquiry was considered. The Land Acquisition Officer has determined the market value of the land and the trees on the basis of the material available on record. The compensation awarded by the Land Acquisition Officer is just, proper and reasonable. According to the respondents, the enhanced compensation claimed by the appellant was excessive and exorbitant.

5. The appellant examined himself as PW-1. PW-2 examined by the appellant is Dr. K.U. Sanghvi, an expert in the valuation of the trees. The appellant relied upon number of documents. The Reference Court as stated above, partly allowed the reference. The Reference Court awarded enhanced compensation of Rs.33,68,720/-, with the direction to deduct the amount of compensation already determined by the Land Acquisition Officer and accepted by the appellant.

6. Being aggrieved by the judgment and award, the appellant has come before this Court.

7. We have heard Shri R.S. Nagpure, learned Advocate for appellant, Smt. Sangita Jachak, learned AGP for the respondent Nos. 1 to 3 and Shri M.A. Kadu, learned Advocate for the respondent No.4. We have perused the record and proceedings.

8. In view of the facts of the appeal, following point falls for determination:-

Whether the enhanced compensation awarded by the Reference Court is just, proper and reasonable?

9. Learned Advocate for the appellant submitted that Reference Court has committed mistake while rejecting the prayer for separate compensation for the land and for the fruit bearing trees. Learned Advocate took us through the documents on record and submitted that the Reference Court has failed to take into consideration the quantity of the fruit bearing trees found existing at the time of the joint measurement carried out in the year 1999. Learned Advocate submitted that the reasons recorded by the Reference Court while rejecting the compensation for the Awala trees are not at all sustainable. Learned Advocate pointed out from the record that the Reference Court has accepted the case of appellant that 1050 Awala trees were planted in the year 1994, but failed to grant the reasonable compensation for the same. He further submitted that the compensation in respect of other fruit bearing trees awarded by the Reference Court is not just and reasonable. Learned Advocate for the appellant submitted that Reference Court has not recorded convincing reasons while discarding the evidence of PW-1 and the evidence of expert Dr. K. U. Sanghvi (PW-2). Learned Advocate submitted that the reference made by the appellant ought to have been allowed in toto.

10. Shri M.A. Kadu, learned Advocate for the respondent No.4 supported the judgment and award passed by the Reference Court. Learned Advocate for the respondent No.4 submitted that the judgment of the Reference Court reflects application of mind to the material placed on record by the appellants. Learned Advocate submitted that number of trees mentioned in the reference, could not be planted in the land admeasuring 4.31 H.R. Learned Advocate submitted that while quantifying the market value of the trees and the land, Reference Court has taken into consideration thick/crowded plantation of the trees. Learned Advocate submitted that there is ample evidence to establish that thick plantation of the fruit bearing trees in this manner would affect the productivity and ultimately the net yield of the trees. Learned Advocate submitted that the land of the appellant was an orchard land and therefore, the compensation could not have been awarded separately for the land and for the trees. The learned advocate submitted that it has been proved that the Awala trees were not bearing fruits and therefore, the rejection of the claim for the enhancement of the compensation for the Awala trees as sought to be contended in the reference was justified.

11. Smt. Sangeeta Jachak, learned AGP for the respondent Nos. 1 to 3 adopted the arguments advanced by the Shri M.A. Kadu, learned Advocate for the respondent No.4.

12. The Reference Court has recorded the reasons for not awarding separate compensation for the land and the fruit bearing trees. The Reference Court has placed reliance on the decision in the case of State of Haryana Vs. Gurcharan Singh reported in A.I.R.(1996) SC 106 to deny the separate compensation for the land and the trees. In this case, the Hon'ble Supreme Court has held that in case of granting compensation for land with fruit bearing trees, separate

compensation for the land and fruit bearing trees cannot be awarded. The same proposition has been laid down by High Court in the case of Special Land Acquisition Officer Vs. Chindha Fakira Patil, reported in 2007 (1)Mh.L.J. 130. Learned Advocate for the appellant relied on the decision of the Hon'ble Supreme Court in the case of Ambya Kalya Mhatre (dead) through LRs and others Vs. State of Maharashtra, reported in 2012 (1) Mh.L.J. 9 and submitted that the separate compensation has to be awarded in respect of land and in respect of the fruit bearing trees. Para Nos. 21 and 22 of the judgment read thus:-

"21. The High Court has also held that once the compensation is awarded for the land, there cannot be additional or separate compensation for the trees. For this purpose, the High Court has relied upon the following observations of this Court in State of Haryana vs. Gurcharan Singh, 1995 Supp (2) SCC 637 :

"It is settled law that the Collector or the court who determines the compensation for the land as well as fruit bearing trees cannot determine them separately. The compensation is to the value of the acquired land. The market value is determined on the basis of the yield. Then necessarily applying suitable multiplier, the compensation needs to be awarded. Under no circumstances the court should allow the compensation on the basis of the nature of the land as well as fruit-bearing trees. In other words, market value of the land is determined twice over; once on the basis of the value of the land and again on the basis of the yield got from the fruit-bearing trees. The definition of land includes the benefits which accrue from the land as defined in section 3(a) of the Act. After compensation is determined on the basis of the value of the land as distinct from the income applying suitable multiplier, then the trees would be valued only as firewood and necessary compensation would be given."

22. We are afraid that the High Court has misread the said decision in regard of valuing the land and trees separately. If the land value had been determined with reference to the sale statistics or compensation awarded for a nearby vacant land, then necessarily, the trees will have to be valued separately. But if the value of the land has been determined on the basis of the sale statistics or compensation awarded for an orchard, that is land with fruit-bearing trees, then there is no question of again adding the value of the trees. Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise. In this case, the determination of market value was not with reference to the yield. Nor was the determination of market value in regard to the land with reference to the value of any orchard but was with reference to vacant agricultural land. In the circumstances, the value of the trees could be added to the value of the land."

13. The decision in the case of Gurcharan Singh was considered by the Supreme Court in Ambya Kalya Mhatre (supra). In this case, it is held that if the compensation is determined on the basis of sale statistics or compensation awarded to the nearby land then in that event separate compensation has to be

awarded for fruit bearing trees. It is held that if the compensation is awarded, on the basis of income capitalization method, then in that event separate compensation can not be awarded for the land and for the trees.

14. It is seen that the Reference Court has quantified the compensation on the basis of income capitalization method. Two sale deeds produced on record by the appellant were not taken into consideration for the purpose of determining the compensation of the land. At this stage, it is pertinent to mention that the appellant in his cross examination has admitted that he purchased 3 hector land, out of 4.31 H R land in 1993-94. He has admitted that 1.31 HR land was acquired in exchange with the adjoining owner. On being confronted with this situation, he could not state the reason for non production of the sale deed of his land which is subject matter in this reference. It is pertinent to note that instead of producing sale deed of this land, which was purchased by the appellant in 1993-94, he placed reliance on other two sale deeds of the land from the adjoining villages.

15. In our opinion, this fact goes to show that the appellant has concealed the important document from the Court. A reasonable judicial inference can be drawn that the said sale deed must be reflecting less purchase price and therefore, the same was not produced before Court. It therefore, goes without saying that in this case, Reference Court has not taken sale statistics/instances into consideration for the purpose of quantifying the compensation. In our view, therefore, the submission advanced by learned Advocate for the appellant that though his land is an orchard land, the appellant was entitled to get a separate compensation for the land and for the fruit bearing trees cannot be accepted.

16. Before proceeding to consider the rival submissions on the point of the quantum of compensation in respect of fruit bearing trees and the land, it is necessary to mention that it has been proved on the basis of the evidence that the trees were thickly planted. The number of trees mentioned in the Reference application by the appellant could not have been planted in the land admeasuring 4.31 HR. The Reference Court has taken into consideration Ex.29, the First joint measurement report. Ex-39 is the second joint measurement report. Ex.30 is the valuation report of the fruit bearing trees of the year 1998-99. The second valuation report of the fruit bearing trees is at Ex.42, which was prepared in 2002-2003. It is pertinent to mention at this stage that there is variance in the number of trees of different varieties in all these documents. It is further pertinent to mention that the Reference Court has reconciled while quantifying the number of trees the first joint measurement report, second joint measurement report, two government valuation reports of the trees, evidence of PW-1 and Dr. K. U. Sanghvi (PW-2) with his valuation report at Ex.70 and 71.

17. According to the appellant, in his land there were 1300 bori trees, 1200 Awala trees, 560 orange trees, 40 sweet-lime trees, 20 Lemon trees and 1442 Bamboo clumps. The witness Dr. K.U. Sanghvi (PW-2) was thoroughly cross examined in view of such claim of the appellant. He has admitted that as per

horticulture recommendation, the distance between the trees of orange/sweet lime and lemon should be 6 x 6 mt. and the distance between Awala and Bori trees should be 5 x 5 mts. The Reference Court has found that for the purpose of plantation of these many trees 5.20 HR land would be required. The learned Judge as can be seen from the judgment accepted the case of the appellant to the extent of 20 to 30% more plantation of the trees inasmuch as, the valuer Dr. K.U. Sanghvi has stated that the plantation was made in hexagonal manner and therefore, 20 to 30% more trees could be planted in the same area of land. After analyzing the material on record and considering the area of the acquired land, learned Reference Court has recorded a finding that by giving weightage of 20 to 30% extra plantation by adopting scientific method, 400 orange trees, 1150 Bori trees, 1050 Awala trees, 40 Sweet-lime trees, could be planted in the acquired land. The Reference Court has quantified the compensation on the basis of income capitalization method for the above mentioned trees. The Reference Court recorded a finding that the appellant would be entitled to get the compensation in respect of the above mentioned trees only.

18. The perusal of the judgment of the Reference Court would show that while quantifying the market value of the land and fruit bearing trees, the Reference Court has taken into consideration, the fact that the plantation was made in crowded manner. The Reference Court found that thick/crowded plantation of the fruit bearing trees would definitely affect the proper growth, production and productivity of the trees. It is pertinent to mention that if the plantation is thick/crowded, then for want of sufficient space and proper sun light, the growth of the fruit bearing trees would definitely get affected. The Reference Court has taken into consideration, the notification issued by the Horticulture Department of the Government of Maharashtra bearing No.H.O.R.-1090/P381/C-4 dated 27.12.1990, wherein the average yield statement of fruit trees has been provided for the purpose of valuation of the fruit trees existing on the land acquired for public purpose. The Reference Court found the said notification, a reliable piece of evidence. In this case, it has been proved that all the trees were planted in the year 1993-94 and as such, on the date of notification were nine years old. It is mentioned in the said Government Resolution that the average yield of nine year old Sweet-Lime trees would be 50 to 100 kg., Orange trees would be 40 to 90 kg., Bori (grafted) trees would be 50 to 80 kg., Citrus group trees including Lemon would be 40 to 70 kg. and the average yield of Awala trees would be 15 to 25 kg. The Reference Court considering the thick/crowded plantation of the trees and for want of any concrete evidence, on the aspect of price etc. took the yield of Orange trees as 40 kg., Sweet Lime trees as 50 kg., Bori trees as 50 kg. and Lemon tree as 40 kg. The Reference Court on the basis of average yield, the market rate of the fruits and the deduction of the maintenance charges quantified the value of each tree of the different varieties. The Reference Court relied upon the valuation report given by Dr. K.U. Sanghvi (PW-2) for deciding the market rate of the fruits of the different varieties. Dr. K. U. Sanghvi (PW-2) in his report, quoted the market rate of the different varieties

of fruits per quintal. The Reference Court made this report a basis for quantifying the market rate of the fruits of different varieties per quintal by making a deduction of 40% from the said rates on given weightage to the relevant factors. The Reference Court applied the multiplier of 10 and came to the conclusion that value of each Orange tree would come to Rs.2100/-, the value of each Bori tree would come to Rs.1620/-, the value of Lemon tree would be Rs.1510/- and the value of Sweet Lime/Orange tree would be Rs.1670/-. The Reference Court added Rs.30/- per tree towards the fuel cost. The Reference Court by adopting this method/formula quantified the compensation of the fruit bearing trees. The Reference Court considering the thick plantation of the Bamboo clumps, awarded Rs.300/- per Bamboo clump. In our opinion, to the above extent, the judgment and award passed by the Reference Court does not warrant interference inasmuch as the respondent No.4 has not challenged the said part of the judgment by filing the separate appeal or by filing the cross objection.

19. The Reference Court has awarded Rs.120/- for each Awala tree. This compensation has been quantified on the basis of the valuation report at Exhibit 42. The Reference Court has taken the admission given by Dr. K.U. Sanghvi, (P.W.2) into consideration. Dr. K.U. Sanghvi (P.W.2) in his cross-examination has admitted that in the government valuation report, the reference was made that none of the Awala trees existing at the spot were fruit bearing. In our opinion, this admission has been read by the Reference Court out of the context. The evidence of Dr. K. U. Sanghvi (PW-2), his valuation report and the valuation statement (Ex.42) would be required to be seen. The valuation report of government valuer at Ex.42 and Ex.30 are self contradictory. In the valuation report at Ex.30 the value of each Awala tree was quantified at Rs.1242. The valuation report at Ex.30 was prepared in the year 1999. The Awala trees were planted in the year 1993-94. It is undisputed that on the date of second joint measurement report as well as second fruit valuation report, the Awala trees were nine years old. It is pertinent to mention that the reference Court has not taken these facts into consideration while determining the enhanced compensation for the Awala trees. The Awala trees bears fruits in winter season and that too once in a year. A farmer would not spent his money and energy for maintaining the barren trees. The Reference Court has awarded the compensation at the rate of Rs.120/- per Awala tree for 1050 Awala trees.

20. In our opinion, the submission advanced by the learned Advocate that the Reference Court has committed the serious mistake on this point deserves acceptance. In our opinion, the Reference Court ought to have enhanced the compensation by applying the ratio and formula applied while awarding the compensation in respect of other fruit bearing trees. We are therefore, inclined to adopt the method and formula adopted by the Reference Court while quantifying the enhanced compensation for 1050 Awala trees. As mentioned above, the minimum yield of the single Awala tree would be 15 kg per year. The price of the same mentioned in the valuation report by Dr. K.U.Sanghvi (PW-2) is Rs.1,000/- per quintal. 40% deduction would be required in view of thick plantation. After

deducting 40% from Rs.1,000/- the price per quintal would come to Rs.600/-. Per kg. Price would come to Rs.6/-. The total price of 15 kg x Rs.6/- would come to Rs.90/-. 10% would be required to be deducted towards the maintenance charges. After deducting 10%, the total price of the yield of one tree would come to Rs.81/-. Rs.81 x 10 would give us the price of one tree. It would come to Rs.810/-. Rs.30 would be required to be added towards the fuel cost of one Amal tree. The total cost of one tree would come to Rs.840/-. The price 1050 trees multiplied by Rs.840/- would come to Rs.8,82,000/-.

21. In our view, adoption of any other method or formula while quantifying the value of the Awala trees would be unjust and improper. This in our view would meet the ends of justice. In our view, the award and judgment passed by the learned Reference Court needs to be modified to this extent. Hence the following order:-

ORDER

(i) The Appeal is partly allowed.

(ii) The judgment and award passed in L.A.C. No.738/2006 by the Reference Court dated 24.11.2008 to the extent of fruit bearing trees and Bamboo clumps other than the Awala trees is up held. The appellant would be entitled to get enhanced compensation of Rs.8,82,000/- for 1050 Awala trees.

(iii) The respondents to deduct the amount of compensation already accepted by the petitioner in LAC No.2/47/2002-2003 in above Reference, out of the enhanced amount of compensation quantified for 1050 Awala trees.

(vi) The respondents to pay component @ 12% p.a. from the date of publication of notification till the date of passing of award over the enhanced compensation by deducting the amount which is already paid.

(v) The respondents to pay a solatium 30% on the enhanced compensation by deducting the amount which is already paid.

(vi) The respondents to pay interest @ 9% p.a. on enhanced compensation, component and solatium for the first year from the date of award and @ 15% p.a. for subsequent year till the date of realization of entire amount.

(vii) The First Appeal is disposed of in above terms.