(2020) 02 BOM CK 0139

In the Bombay High Court

Case No : First Appeal No. 275 Of 2020

Shaikh Noor APPELLANT

Vs

State Of Maharashtra And Anr RESPONDENT

Date of Decision : 28-02-2020

Acts Referred:

Land Acquisition Act, 1894 — Section 4(1), 11, 18, 23(2), 23(1A), 28, 34, 54
Maharashtra Land Revenue Code, 1966 — Section 157

Citation : (2020) 02 BOM CK 0139

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

Bench : Single Bench

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

Final Decision : Partly Allowed

Judgement

,,,,,,,

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

2. The instant appeal put in question quantum of compensation amount determined by the learned Reference Court in LAR No. 425 of 2010 filed by,,,,,,,

the appellant - original claimant under Section 18 of the Land Acquisition Act, 1894 (for short â??Act of 1894â??).",,,,,,,

3. The factual aspect of the matter in nutshell is that, the agricultural land Gut No. 197 admeasuring 1H.61 R located at village Panwadi, Ta.",,,,,,,

Phulambri, District Aurangabad belonging to appellant-original claimant was put under acquisition for construction of percolation tank No. 6 of village",,,,,,,

Panwadi. The notification under Section 4(1) of the Act of 1894 was published on 13-01-2006 in the official Gazette. After due compliance of,,,,,,,

procedural formalities the Special Land Acquisition Officer (â??SLAOâ?)

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 land as well,,,,,,,

as valuation of fruit bearing trees located in the field. Therefore, he accepted the compensation amount offered by the SLAO under protest and filed",,,,,,,

the Reference Petition, taking recourse of provisions of Section 18 of Act of 1894, for enhancement of compensation amount. The learned Reference",,,,,,,

Court dealt with the Reference Petition filed on behalf of appellant-claimant for determination of just and reasonable market value of the land and fruit,,,,,,,

bearing trees under acquisition. Thereafter, on appreciation of entire oral and documentary evidence adduced on record, the learned Reference Court",,,,,,,

proceeded to partly allowed the Reference Petition and agreed to enhance the market price of acquired lands from Rs.965/- per R calculated by,,,,,,,

SLAO to market price @ Rs.2605/- per R. The learned Reference Court also pleased to allow the enhancement of compensation for fruit bearing,,,,,,,

trees of appellant-claimant. The Reference Court placed reliance on the report of claimantâ??s Valuer. However, the learned Reference Court did",,,,,,,

not allow the entire amount of compensation calculated by the claimantâ??s valuer Dr. V. K. Patil, but allowed to enhance the valuation of fruit",,,,,,,

bearing trees @ 40% of report of claimantâ??s valuer.,,,,,,,

4. Being aggrieved with the mode and manner of learned Reference Court, for determination of market value of the acquired land as well as",,,,,,,

deduction of 60% in the valuation of the fruit bearing trees assessed by Valuer Dr. Patil, the appellant-claimant rushed to this Court and preferred the",,,,,,,

present appeal under Section 54 of the Act of 1894 for redressal.,,,,,,,

5. Learned counsel for the appellant vehemently submits that the impugned Judgment and Award passed by the Reference Court is erroneous, illegal",,,,,,,

and not within the ambit of provisions of law. The learned Reference Court did not appreciate the oral and documentary evidence on record in its,,,,,,,

proper perspective. The learned Reference Court overlooked the circumstances that the acquired land of the appellant - claimant was rich and fertile,,,,,,,

land having irrigation facility from the well located in the acquired land. The learned Reference Court erroneously classified the acquired land as,,,,,,,

seasonal irrigated land instead of (Bagayat) Perennially irrigated land for calculation of market price. The learned Reference Court ought to have,,,,,,, determined the market price of the acquired land as Perennially irrigated land. The learned counsel for appellant harped on the circumstances that the,,,,,,,

learned Reference Court relied upon the valuation report produced and proved by claimantâ??s valuer Dr. Patil. But, without any reasonable cause,",,,,,,,

the learned Reference Court proceeded to determine the value of fruit bearing trees @ 40% of the report of claimantâ??s valuer. The procedure,,,,,,,

adopted by the learned Reference Court for assessment of the valuation of land as well as fruit bearing trees @ 40% of the value determined by,,,,,,,

Valuer Dr. Patil, is erroneous, illegal and without any reasonable cause. Learned counsel for appellant fervidly submits that respondent-State has",,,,,,,

acquired the land and fruit bearing trees for the public purpose of construction of percolation tank in the village. The SLAO as well as learned,,,,,,,

Reference Court granted the meager compensation amount for his land and fruit bearing trees. The learned Reference Court ought to have,,,,,,,

considered the land of the claimant as Bagayat land for payment of compensation. The learned Reference Court also committed error in deducting,,,,,,,

60% amount of valuation of trees calculated by claimantâ??s valuer. Learned counsel requested to grant just and reasonable compensation to the,,,,,,,

claimant for his Perennially irrigated land and fruit bearing tress as per valuation made by horticulturist Dr. Patil. The learned counsel relied upon the,,,,,,,

legal guidelines delineated by Honourable Apex Court in the case of Chindha Fakira Patil (D) through L.Rs. Versus Special Land Acquisition Officer,",,,,,,,

reported in 2011(6) Bom.C.R.735 (Supreme Court).,,,,,,,

6. The learned AGP for respondents raised the objections and submits that the learned Reference Court has appreciated the circumstances on record,,,,,,,

in proper manner and reasonably allowed the enhancement of compensation in favour of appellant-claimant. There was no error in the findings of,,,,,,,

learned Reference Court. There is no need to cause interference in it.,,,,,,,

7. Having given anxious consideration to the arguments canvassed on behalf of both sides in the light of oral and documentary evidence adduced on,,,,,,,

record it reveals that there are two basic issues which required to be dealt with in this appeal. Firstly, whether the appellant-claimant proves that the",,,,,,,

acquired land was essential to be classified as (Bagayat) Perennially land for calculation of market price. Secondly, whether the appellant-claimant",,,,,,, succeeded to establish that the approach of learned Reference Court for deduction of 60% of the total valuation assessed by the claimantâ??s valuer,,,,,,,

would be legal, appropriate and within purview of law to ascertain the just and reasonable cost of fruit bearing trees.",,,,,,,

8. The appellant-claimant adduced his evidence by filing affidavit in the form of examination-in-chief (Exhibit-11) on record. He deposed that his land,,,,,,,

bearing Gut No. 198 was Bagayat, Perennially irrigated having ample source of water from the well located in the land. He produced document of",,,,,,,

7/12 extract (Exhibit-22) on record to show existence of well in the acquired land. It is not put into controversy that the SLAO also awarded,,,,,,,

compensation of Rs.18090/- to the appellant-claimant for his constructed well under acquisition after its due valuation from Government Valuer. The,,,,,,,

learned Reference Court has taken into consideration the entries in the cultivation column of 7/12 extract during the relevant period and noticed that,,,,,,,

the appellant-claimant had sown the crops like Bajra, Jawar, Cotton and groundnuts upto year 1993 in the acquired land. The learned Reference Court",,,,,,,

also came across with plantation of fruit bearing trees like Guava, Mango and Custard Apple etc. in the acquired land. Learned Reference Court",,,,,,,

classified the land under acquisition of appellant-claimant as seasonally irrigated land for the purpose of calculation of its market value. In paragraph,,,,,,,

No. 13 the learned Reference Court has observed as follows :-,,,,,,,

â??13. The respondents without adducing oral as well as documentary evidence have subjected the applicant to the cross-examination. In the course,,,,,,,

of cross examination suggestion was given that in the acquired land there was no well. The applicant has flatly denied the suggestion. There is,,,,,,,

presumption under Section 157 of the Maharashtra Land Revenue Code, 1966 about the revenue entries, Suggestion itself will not be sufficient to",,,,,,,

rebut that presumption. If, the nature of the crops raised by the applicant is taken into consideration having special regard to the existence of well one",,,,,,,

would conclude that the acquired land was seasonal irrigated land and not perennial irrigated land as claimed by the applicant and as submitted by the,,,,,,,

learned advocate for the applicant. It thus comes out that acquired land of the applicant was seasonal irrigated land.â??,,,,,,,

9. The learned counsel for appellant criticized the findings of the learned

Reference Court and submits that classification of the acquired land as,,,,,,,

seasonally irrigated land on the basis of yield taken from it is totally erroneous, illegal and based on misconception of factual aspects. The learned",,,,,,,

counsel relied upon the exposition of factual aspects by the Honourable Apex Court in the case of Chindha Fakira Patil (deceased) through L.Rs.,,,,,,,

Versus Special land Acquisition Officer, reported in 2011 (6) Bom. C. R. 735. The Honourable Apex Court in paragraph No. 13 elucidated that:-",,,,,,,

â??13. The High Court was also not right in upsetting the finding of the Reference Court on the issue of nature of land. In his deposition, Arjun",,,,,,,

Sr.

No.","Acquired Fruit

Bearing Trees",Market Rate of Fruit Bearing Trees,"Compensation Payable to the Claimants for

Fruit Bearing Trees [80% of Valuation

(Exhibit-27)]",,,,

,,,,,,,

,,,,,,,

,,,,,,,

,"Gat

No.","Type

of

Trees","Number

of

Trees","Value Fixed by

Valuer Dr.Patil

(Exhibit27)","Awarded by Reference Court

[40 % of Valuation (Exhibit-

27)]","Enhanced by This Court [40

% of the Valuation (Exhibit-

27)]",

1,2,3,4,5,6,7,8

1,198,Mango,3,126835,50734,50734,101468

2,,Mango,20,916455,366582,366582,733164

3,,Ber,12,65618,26247,26247.4,52494.4

4,,Ber,8,40490,16196,16196,32392

5,,Sitafal,15,42830,17132,17132,34264

6,,Chinch,5,278968,111587,111587.4,223174.4

Total,,,,1471196,588478,588478.8,1176956.8