

(2018) 01 BOM CK 0068
In the Bombay High Court
Case No : 691 of 2005

Smt. Pramilabai wd/o Manguji

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 17-01-2018

Acts Referred:

[Land Acquisition Act, 1894](#), [Section 4](#) -
Publication of preliminary notification and powers of officers thereupon.

Citation : (2018) 01 BOM CK 0068

Hon'ble Judges : Manish Pitale

Bench : Single Bench

Advocate : P.R. Agrawal, Shyam Jaiswal, M.H. Deshmukh

Judgement

1. There are two appeals for consideration, one filed by the claimants and the other by the State, both aggrieved by the judgment and order dated 08.04.2005 passed by the District Court at Akola (hereinafter referred to as "the Reference Court") in Land Acquisition Case No.78 of 2004. The claimants are aggrieved by the amount of compensation granted by the Reference Court and they seek further enhancement while the State has approached this Court contending that the enhancement granted by the Reference court to the claimants is not justified and that the award passed by the Special Land Acquisition Officer deserves to be restored.

2. The land acquisition proceedings in the present case concern land at Gat No.126, mouza Dagadparwa, tahsil Barshitakli, district Akola, admeasuring 4 H 21 R for construction of water storage dam. The notification under Section 4 of the Land Acquisition Act, 1894 in the present case was issued on 21.04.2000 and the section 6 notification under the said Act was issued on 03.05.2001. Pursuant to the completion of proceedings before the Special Land Acquisition Officer, on 11.10.2002, the award was declared. The Special Land Acquisition Officer granted compensation at the rate of Rs.62,000/- per hectare for the land acquired and for the fruit bearing trees i.e. orange trees, lemon trees and a

gauva tree, compensation was granted at specific rates, but no compensation was granted for mango trees or the well situated in the land in question. In this manner, total compensation of Rs.7,89,477/- was awarded by the Special Land Acquisition Officer.

3. Aggrieved by the said award, the claimants (appellants in First Appeal No.691 of 2005) preferred a reference application under Section 18 of the said Act, claiming enhanced compensation for land @ Rs.1 lakh per acre as also compensation for the well and mango trees with enhanced compensation for the orange, lemon and gauva trees over and above the compensation granted by the Special Land Acquisition Officer in the award.

4. In support of their claim, the claimants examined six witnesses while the Land Acquisition Officer was examined on behalf of the State in support of the award. Amongst the witnesses for the claimants, were PW1 Sharad Umale, a retired Professor of Horticulture, who deposed in respect of the value of trees. PW4 was the claimant- appellant no.4 in First Appeal No. 691 of 2005, who deposed in respect of sale instances placed on record in support of the enhanced claim of compensation of the claimants. PW5 was the Circle Inspector Narayan Ingole, who deposed in respect of the location of the land and the village wherein the land was located in the context of adjoining villages and PW6 was the Market Inspector of the Agriculture Produce Market Committee, who deposed in respect of the rates at which the fruits were sold at the relevant time. The map of the village and a map showing its location along with that of adjoining villages were exhibited at Exhs. 31 and 32.

5. On the basis of the oral and documentary evidence on record, by the impugned judgment and order dated 08.04.2005, the Reference Court enhanced the compensation for the land to Rs.60,000/- per care and also granted compensation of Rs.1,00,000/- for the well located in the land. The compensation for the orange trees was increased from Rs.489/- per tree to Rs.7000/- per tree and for the lemon trees from Rs.1489/- per tree to Rs.6000/- per tree. The Reference Court also granted compensation for the mango trees, which the Land Acquisition Officer had denied. In this manner, the total compensation upon enhancement was held by the Reference Court to be Rs.90,41,077/-.

6. Mr. P.R. Agrawal, learned counsel appearing on behalf of the claimants-appellants in First Appeal No.691 of 2005, submitted that the enhancement of compensation granted by the Reference Court for the acquired land was insufficient and that there was ample material placed on record to justify the claim of the claimants of compensation @ Rs.1,00,000/- per acre. Reference was made to the sale instances placed on record pertaining to lands in adjoining villages, where the rates fetched by dry lands demonstrated that the claim raised by the claimants was justified. In this regard, the learned counsel appearing for the appellants referred to the evidence of PW4 and PW5. It was submitted that no credible evidence was placed on record on behalf of the State to demonstrate

that the findings recorded by the Reference Court were justified. It was submitted that the sale instances relied upon in the award and by the Land Acquisition Officer were not placed on record and no evidence was led in support of the same. In respect of further enhancement of claim for fruit bearing trees, no serious attempt was made to demonstrate any error in the findings recorded by the Reference Court. The learned counsel appearing for the claimants relied upon the judgment of the Hon''ble Supreme Court in the case of *Ambya Kalya Mhatre .vs. State of Maharashtra* reported in (2011) 9 Supreme Court Cases 325, in support of the contentions raised in the appeal.

7. On the other hand, Mrs. M.H. Deshmukh, learned Assistant Government Pleader appearing on behalf of the State (Appellant in First Appeal No. 237 of 2008) submitted that the enhancement of compensation granted by the Reference Court both for the land and for the fruit bearing trees was unjustified and that the award of the Special Land Acquisition Officer deserved to be restored. It was submitted that grant of compensation separately for the land and for the fruit bearing trees and well was not justified. In this regard, reliance was placed on the judgment of the Hon''ble Supreme Court in the case of *State of Harayana .vs. Gurcharan Singh* - 1995 Supp (2) Supreme Court Cases 637.

8. Having heard the learned counsel for the parties and upon perusal of the pleadings, evidence and documents on record, the point that arises for determination is, whether the enhancement of compensation granted by the Reference Court was justified and whether the claimants can successfully claim further enhancement of compensation in the light of material on record.

9. In order to determine the aforesaid point, it would be necessary to refer to the evidence and material on record. In respect of grant of fair compensation for the acquired land, the evidence of PW4 is relevant because reference therein has been made to the three sale instances on which the claimants have relied. The first sale instance is the sale deed dated 15.04.1997 pertaining to village Atkali wherein the land has been sold at the rate of Rs.47,058/- per acre. This was dry crop land. The next document is sale deed dated 03.03.2000 pertaining to sale of dry land from the village Pimpalshenda wherein it was sold at the rate of Rs.1,34,891/- per acre. The third sale instance is an agreement to sale dated 18.03.2002 pertaining to village Punoti wherein the dry land has been sold at the rate of Rs.1,30,276/- per acre. In order to analyse, as to whether the aforesaid three sale instances could be a relevant yardstick for ascertaining the fair value of the acquired land, it is necessary to examine the location of the said villages. A perusal of the map at Exh.32 shows that the said three villages i.e. Atkali, Pimpalshenda and Punoti are adjoining to village Dagadparva wherein the acquired lands were located.

10. In this context, evidence of PW5 the Circle Inspector is also relevant because he states that the aforesaid villages were Ujad villages i.e. where there was no residential area and the land was dry. Apart from this, it is stated by the said witness that the aforesaid villages were located at interior place as compared to

village Dagadparva, where the acquired lands were located and the said village Dagadparva was near the State highway as compared to the aforesaid three villages. It has also come on record as per the evidence of PW3 that there was a well located in the acquired land and that the land in question was irrigated land. Therefore, to arrive at a proper figure as regards the compensation payable for the acquired land, the factors regarding the land being irrigated and its location near the Highway ought to be taken into account.

11. In this regard, the Reference Court has discussed all three aforesaid sale instances and it has also referred to the evidence of PW4 and PW5. But, while arriving at the finding as to what should be the price that the acquired land would have fetched in the year 2000 when the notification under Section 4 of the aforesaid Act was issued on 21.04.2000, the Reference Court simply states that considering all aspects regarding the sale instances and situation on record, it was of the opinion that the acquired land was capable of fetching Rs.60,000/- per acre. There is no discussion other than this in the impugned judgment and order of the Reference Court as to why it arrived at the said figure.

12. The material and evidence on record shows that the sale instances relied upon by the claimants pertained to the aforesaid three villages and that the lands in the said sale instances were dry lands. Apart from this, the location of the land in question was certainly better, since it was located near the Highway as compared to the lands in the aforesaid three villages. Despite the fact that the location of the said lands was inferior to the land in question and they were dry lands, the sale instances pertaining to the years 1997 and 2000 show that price fetched was in one case as high as Rs.1,34,891/- per acre. These aspects have not been taken into account properly by the Reference Court while rendering a finding that the acquired land would have fetched @ Rs.60,000/- per acre. The evidence and material on record particularly the locational advantage of the land in question, shows that the finding of the Reference Court was not accurate.

13. The learned counsel appearing for the State has relied upon the evidence of the Land Acquisition Officer wherein he has referred to and relied upon sale instances showing that around the time when the notification under Section 4 of the aforesaid Act was issued, lands were sold in the vicinity at the rate of Rs.61,728/-per hectare. It was claimed that this was sufficient material to justify the conclusion of the Land Acquisition Officer in his award that the claimants deserved compensation @ Rs.62,000/- per hectare for the acquired land. But, a perusal of the cross-examination of the said witness i.e. the Land Acquisition Officer shows that he admitted in the evidence that he had not even called for a copy of the sale deed on which he relied while rendering a finding on the quantum of compensation. The sale instances on which the Land Acquisition Officer has relied upon, were also not placed on record before the Reference Court. Therefore, there was no reliable evidence or material on record to support the conclusion derived by the Land Acquisition Officer in the award.

14. As I have found that the claimants had placed on record sufficient oral and

documentary evidence to justify their claim of compensation for the lands at Rs.1,00,000/- per acre , I hold that the Reference Court committed an error in limiting the enhanced compensation at Rs.60,000/- per acre. Accordingly, I hold that the claimants are entitled to further enhanced compensation and that the fair value of compensation for the acquired land payable to the claimants is Rs.1,00,000/- per acre.

15. As regards the quantum of compensation granted for the fruit bearing trees, as noted above, no serious effort was made by the learned counsel appearing on behalf of the claimants for further enhanced compensation. Therefore, it needs to be examined as to whether the enhanced compensation granted by the Reference Court for the fruit bearing trees was justified, particularly when the State has also come up in appeal against the impugned judgment and order.

16. In order to examine this aspect of the matter, the evidence of PW1 Sharad Umale, a retired Professor of Horticulture, is significant. He has been produced as a witness by the claimants in support of their claim. The said witness in his deposition has elaborated upon the valuation certificate issued by him in respect of recommended compensation for various fruit bearing trees standing on the land when it was acquired. A perusal of the deposition of the said witness shows that a detailed analysis has been made in respect of the age of the orange trees and other trees standing on the land. A projection has been made as to what would be the value of the yield from the fruit bearing trees based on proper yardstick of valuation. Nothing much has been elicited in the cross-examination of this witness. The learned counsel appearing on behalf of the State could not point out any discrepancies in the findings of the Reference Court in this regard. The Reference Court has discussed the aforesaid evidence of PW1, as also the valuation report on record and it shows that although the claimants had claimed compensation for the orange trees at Rs.10,000/- per tree and that in the valuation report recommendation at Rs.12,536/- per tree was made, the Reference Court has factored in the aspect of age of the fruit trees to arrive at a reasonable conclusion that the claimants deserved compensation @ Rs.7000/- per orange tree. The findings in respect of enhancement of compensation for the other trees is also based on proper analysis of the evidence on record.

17. The other aspect of the matter is compensation granted for the well located on the acquired land. In this regard, the claimants have produced PW3 in support of their claim and the Reference court has taken into account the evidence of the said witness to arrive at a finding that the Land Acquisition Officer was not justified in not granting any amount towards compensation for the well. It is found on the basis of the evidence and material on record that the acquired land was irrigated land on which as many as 725 orange trees were standing, along with mango and lemon trees and a gauva tree. The land was irrigated with the help of the well located on the land and that it cannot be said that the compensation granted by the Reference Court for the well was not justified.

18. The learned counsel appearing on behalf of the State relied upon the

judgment of the Hon"ble Supreme Court in the case of State of Haryana .vs. Gurcharan Singh (supra), particularly paragraphs 3 and 4 thereof to contend that the Reference Court was not justified in granting separate compensation for the land and the fruit bearing trees. In this regard, the reliance placed by the learned counsel appearing for the claimants on the judgment, of the Hon"ble Supreme Court in the case of Ambya Kalya Mhatre (supra) is correct. In the said judgment relied upon by the learned counsel appearing on behalf of the claimants, the relevant portion of the earlier judgment of the Hon"ble Supreme Court in the case of State of Haryana .vs. Gurcharan Singh has been referred to and it has been explained and clarified. The relevant portion of the judgment of the Hon"ble Supreme Court in the case of Ambya Kalya Mhatre (supra) reads as follows:-

"34. 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."

35. We are afraid that the High Court has misread the said decision in regard to 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. "

19. The above quoted portion of the said judgment clarifies that if the value of

the land has been determined with reference to sale statistic or compensation awarded for nearby vacant land, then the trees will have to be valued separately. In the instant case, the sale instances relied upon by the claimants pertained to dry land of adjoining villages and it has come in the evidence of PW5, the Circle Inspector, that the sale instances pertained to lands located in adjoining villages that were Ujad villages i.e. where there was minimal agricultural activities. The material on record shows that the sale instances pertained to lands that were absolutely dry and that therefore, there was no question of the lands having been valued as lands bearing fruits bearing trees. Thus, the learned counsel appearing on behalf of the claimants is justified in contending that the compensation in the present case was correctly granted by the Reference Court for the land and the fruit bearing trees separately.

20. In the light of the above, I find that the impugned judgment and order passed by the Reference Court needs to be modified. While the quantum of compensation granted for fruit bearing trees and other heads of compensation does not deserve any interference, but the compensation granted by the Reference Court for the acquired land deserves to be enhanced further. I hold that on the basis of material and evidence on record, the claimants deserve compensation for the acquired land @ Rs.1,00,000/- per acre. The impugned judgment and order of the Reference Court is, therefore, modified to that extent. It is clarified that the claimants would be entitled to other statutory benefits on the enhanced component of the compensation as granted by this Court. Accordingly, First Appeal No.691 of 2005 filed by the claimants is partly allowed and First Appeal No.237 of 2008 filed by the State is dismissed. No orders as to costs.

21. It is submitted by the learned counsel appearing on behalf of the claimants that they were permitted to withdraw 50% of the compensation granted by the Reference Court, which was deposited in this Court by the order dated 07.01.2008. In the light of the fact that I have partly allowed the appeal of the claimants and further enhanced the compensation, the claimants are permitted to withdraw the balance 50% amount lying in this Court along with accrued interest.