

(2023) 07 BOM CK 0083
In the Bombay High Court
Case No : First Appeal No. 1081 Of 2014

Sukhdeo Sampatrao Deulkar

APPELLANT

Vs

Special Land Acquisition Officer And Others

RESPONDENT

Date of Decision : 31-07-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 6, 18

Citation : (2023) 07 BOM CK 0083

Hon'ble Judges : M.S. Jawalkar, J

Bench : Single Bench

Advocate : ?Anand Parchure, Uday Changle, K.L. Dharmadhikari

Final Decision : Partly Allowed

Judgement

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M.S. Jawalkar, J

1. Heard learned Counsel for the appellant and learned Counsel for the respondent Nos. 1 and 2/ State.

2. Present appeal is filed by appellant being aggrieved by the judgment dated 11/08/2014, passed by learned 7th Joint Civil Judge, (Senior Division), Nagpur in Land Acquisition Case No. 54/1989 to the extent it refused to enhance the compensation to the tune of Rs.11,10,000/-.

3. The brief facts of appellant's case is as under:

The appellant was the owner of the agricultural land admeasuring 1.67 Hectare, 1.21 Hectare and 2.36 Hectare of Kh. Nos. 117, 121 and 122 of Mouza Parsodi, P.H. No. 42, Tah. And Dist. - Nagpur respectively. The total land acquired was 5.21 Hectare of the appellant. It is submitted that the said land was acquired by the State of Maharashtra for respondent No.3 i.e Cotton Research Institute.

4. The Notification under section 4 of the Land Acquisition Act, (hereinafter

referred to as the Act) was published in Government Gazette on 01/04/1985. The appellant has also filed objection under Section 5 of the Act. It is further submitted that after publication of the Notification under Section 4, the respondents further issued declaration under Section 6 of the Act on 27/10/1985. It is submitted that in pursuance of the notification under the Act, the appellant has objected the necessity of the acquisition itself and alternatively also claimed the market price prevailing at the relevant time.

5. On 04/04/1987, the Special Land Acquisition Officer passed an award and granted meager amount of compensation @ of Rs. 26,000/- per hectare for the land and Rs.1/- for each Subabhul tree. The appellant being dissatisfied with the award, preferred a reference u/s 18 of the Act before the learned 7th Joint Civil Judge, (Senior Division), Nagpur vide L.A.C. No. 54/1989 thereby claiming the compensation @ of Rs.1,00,000/- per acre, Rs.200/- for per Su Babhul trees, Rs.30000/- for well and also claimed other statutory relief. The learned reference Court partly allowed the reference vide its judgment dated 09/04/2001, thereby enhanced the compensation and allow the same at the rate of Rs.1,75,000/- per hectare towards acquisition of land i.e. Rs.70,000/- per acre, Rs.5,60,000/- was also granted for 2800 Su Babhul tree and Rs.20,000/- was granted for well.

6. The aforesaid judgment dated 09/04/2001 was challenged by the respondent Nos. 2 and 3/state by filing First Appeal bearing Nos. 341/2001 and 312/2002. It is submitted that the said First Appeals were allowed and matter was remanded back to the learned Lower Court, by the Hon'ble High Court on the technical ground that since acquiring body was not made party to the L.A.C. No. 54/1989. After remand, no evidence lead by acquiring body. The learned reference court partly allow the reference vide its judgment dated 11/08/2014 and thereby enhanced the compensation and allow the same at the rate of Rs. 1,50,000/- per hectare towards the acquisition of land i.e Rs. 60,000/- per acre, and refused to grant compensation for trees and well. The aforesaid judgment is the subject matter of challenge in the present Appeal.

7. It is the contention of the learned counsel for the appellant that learned lower Court has miserably failed to take into consideration the material placed on record in respect of the potential value of the land which at the relevant time could have fetched minimum Rs.1,00,000/- per acre as at that time the market rate prevailing for the said area was much higher than what has been fixed by the Land Acquisition Officer as also by the Lower Court.

8. It is further contended that the said land is situated on Nagpur – Wardha highway, 5 kms from Sonegaon Airport and ½ km from Khapri railway station. The said areas are developed by private societies and are converted into plots, which are used for building activity. There are industries of chemical and petroleum such as L.P. Gas filling plant and Indian Oil etc. The land acquired by the respondents was black cotton soil and out of total land acquired by the respondents, about 1 hectare of land was irrigated. It is also contended that there was a big well and to with electric motor pump. It is pertinent to note that

from the sale deed dated 24/04/1984 it can be apparently seen that the market value of land was more than Rs.1,00,000/- per acre, therefore this needs interference by this court.

9. Learned Counsel for appellants relied on following citations :

1. Waman S/o Rajaram Gabhane Vs. State of Maharashtra and others, in First Appeal No. 984/2008

10. On the contrary, it is the contention of the learned Counsel for the respondent that the compensation granted by L.A.O. is proper and correct. It was also taken into consideration the yearly yield of the trees standing in the applicants land and correctly granted compensation to the applicants. It is further contended that once the applicants have accepted the value of the land they can not file separate claim for compensation in respect of trees and Well situated in their acquired lands. There are gradations of trees, Therefore, applicants can not claim same amount of compensation for each trees. As such, the claim of applicants is exorbitant and excess for which they are not entitled and this fact is rightly appreciated by the learned lower court which needs no interference.

11. I have heard learned Counsel for appellant and also learned Counsel for respondent No.3. It is submitted by learned Counsel for appellant that there is no amount awarded towards well as well as for Subhabul trees and the learned Referral Court also erred in holding that the land has dry crop land. Whereas Special Land Acquisition Officer considered the land as seasonal irrigated land. I have perused Exhibit 43 Panchanama as well as award passed by Special Land Acquisition Officer. Though, it is recorded in paragraph No.14 of the award that there is a well in Survey No.117 (P) and 128. It is held that since the rate of land is given as per seasonal irrigated land, no separate cost of well is considered. If paragraph No.5 is perused, it appears that the seasonal irrigated land amount awarded is Rs.20,000/- per hectare. If evidence of claimant is perused, he has specifically deposed that well is constructed in the field which was 30 ft. deep and 15 ft. in diameter. It has ample water. The well was ancestral one. He has spent Rs.25,000/- for reconstruction around 20 years back. There is no cross-examination nor any evidence in rebuttal placed on record by the respondents. As such, the amount of Rs.25,000/- needs to be awarded towards well. So far as, valuation of land is concerned, the land appears to be semi irrigated and further amount of valuation should be increased by 0.5 times. Thus value of the land would be 150000 + 75000 per hector.

12. The learned Referral Court failed to appreciate this fact. So far as valuation of trees are concerned in paragraph No.13 of the award, it is mentioned under the caption "Valuation of other trees" that there are 3000 Subhabul trees existing on the land when inspection was carried out by the Divisional Forest Officer. However, it appears that the said panchanama was carried out by Talathi which is exhibited and marked as Exhibit 43. It is apparently perverse finding recorded by

learned Referral Court that those plants were saplings and seedlings. The letter of FDO which was referred by Land Acquisition Officer is not placed on record.

13. The learned AGP submitted that the height of the said Subhabul trees are hardly up to 3 cm. to 7 cm. However, on perusal of Exhibit 43, it is clear that around 1002 trees are having 20 ft. height and girth 25 cm. There is height of 18 ft. of around 1010 trees. 15 ft. of around 250 trees. 12 ft. of around 200 trees. As such, the shortest plants are of 3 ft. numbering 40.

14. The learned Referral Court failed to appreciate that the plants having 20 ft. height and 20 to 25c.m. girth must be grown up plant and not seedlings or saplings. There is no consideration to this report by the learned Referral Court. In my considered opinion, at least, the Subhabul trees above 12 ft. should be given rate of Rs.150/- per tree and the trees below 12 ft. needs to be given Rs.100/- per plant. As such, the plants in number 2452 to be given with compensation of Rs.150/- which comes to Rs.3,67,800/- and the plants 240 to be given with around of Rs.100/- per tree which comes to Rs.24000/-. Thus, claimant is entitled for (3,67,800 + 24000) Rs.3,91,800/-.

15. The learned Referral Court failed to appreciate that the department failed to lead any evidence. Only on the basis of some letters issued by DFO, it cannot be decided that Subabhul trees have saplings or seedlings, specifically when inspection report of Talathi clearly goes to show that the number of height of trees and girth of trees. There is no dispute or controversy in respect of said inspection report and appellant is relied on the same. The said DFO has not examined by department nor there is any reference that he had carried out any inspection.

16. The Land Acquisition Officer only on the basis of Sub Divisional Forest Officer report held that there are Subabhul saplings and seedlings. However, the Land Acquisition Officer failed to appreciate that no data regarding height and girth measurement of Subabhul seedlings is obtained by the Divisional Forest Officer. He is not even examined by the respondents in reference.

17. As such, there was no impediment for the Referral Court to rely on the said report, even though, Talathi was not examined by the respondent/department. The learned Tribunal misread the inspection report and proceeded on the premises that the height of the Subabhul tree is up to 3 c.m. to 25 c.m. In fact it is girth of the tree and height is as referred above more than 20 ft. in respect of the 1000 trees towards 18 ft. trees in respect of 1010 trees up to 12 ft. to 15 ft. in respect of 450 trees. As such, there is apparent mistake on the part of the Referral Court. As mentioned above, the appellant is entitled for the compensation towards said Subabhul trees. Admittedly, the inspection report is prepared by Government Authority. The value of the tree ought to have been calculated considering their height and girth. As such, as held above, the applicant is entitled for enhance compensation for the Subabhul trees. Accordingly, I proceed to pass the following order:

ORDER

i) The appeal is partly allowed.

ii) Rate of land is fixed at the rate of Rs.2,25,000/-per hectare along with accrued interest and statutory benefits. The appellant is also entitled for Rs.25,000/-for well along with accrued interest. The appellant is also entitled for Rs.150/- per Subabhul tree having height more than 12 ft. that comes to Rs.3,67,000/-and Rs.100/- per tree of Subabhul having height below 12 ft. that comes to Rs.24,000/-.

iii) The respondent to deposit enhanced compensation within a period of two months from passing of this order of deposit of enhanced compensation.

iv) The appellant is entitled to withdraw the same.

The appeal stands disposed of accordingly.