

(2023) 06 BOM CK 0071

In the Bombay High Court

Case No : First Appeal No.1013 Of 2017, Cross Objection No.11 Of 2020

Vidarbha Irrigation Development And Others

APPELLANT

Vs

Shamrao Nandu Rathod And Others

RESPONDENT

Date of Decision : 21-06-2023

Acts Referred:

Land Acquisition Act, 1894 — Section 4, 9, 12(2), 18, 54

Citation : (2023) 06 BOM CK 0071

Hon'ble Judges : Urmila Joshi Phalke, J

Bench : Single Bench

Advocate : V. V. Dahat, A. B. Nakshane, M. A. Kadu

Final Decision : Dismissed

Judgement

Urmila Joshi-Phalke, J

1. The present appeal is preferred under Section 54 of the Land Acquisition Act against the Judgment and Award passed by the Reference Court in Land Acquisition Case No.95 of 2006 decided on 09.03.2015 by which the compensation at the rate of Rs.1,50,000/- per hectare was granted towards the land and Rs.3,500/- per orange trees for 952 orange trees, Rs.2250/- for 176 of orange trees and Rs.1500/-for 242 orange trees.

2. Brief facts in nutshell are as under:

Shri Shamrao s/o Nandu Rathod, - original claimant was the owner of Gat No.24 admeasuring 4 hectare 99 R. situated at Mouza Bhawarkhed, Tq. Ner, District Yavatmal. The said land was acquired by the respondents for Kumbharpind Project. The Notification under Section 4 was published on 17.12.1998 and Notification under Section 9 was also issued. The Special Land Acquisition Officer has declared the Award on 05.07.2002 by awarding the compensation at the rate of 41,500/- per hectare. The Special Land Acquisition Officer has also awarded the compensation towards the Well and the orange trees which was inadequate and therefore, the original claimant has received the compensation under protest.

3. As per contention of the claimant, the Special Land Acquisition Officer has not given any opportunity to adduce relevant evidence before assessing the amount of compensation and declared the Award on 05.07.2002. His Land was of good quality, having good potential and fertility and having potential of horticulture. The facility of Well irrigation was available in the said land. The claimant has cultivated crop like Cotton, Toor etc. and was getting income of Rs.30,000/- per year from the said land. He was also getting the income from orange trees of Rs.2,00,000/- per hectare per year. He further contended that his land was situated at Bhawarkhed adjacent to Sindkhed Ner road. Bhawarkhed at a distance of 6 Km from Ner Taluka having basic facilities like School, Gram Panchayat, Electricity, Water and Bus facilities. But the Special Land Acquisition Officer had not considered the same and awarded the inadequate compensation. He further contended that the sale transactions are not available from the same village as there was prohibition for the sale transaction till 17.12.1998, in view of the provisions of the Maharashtra Resettlement of Project Displaced Persons Act, 1976, therefore, Special Land Acquisition Officer ought to have considered the sale instances of the adjacent village wherein the rate of the land was 2,50,000/- per hectare for the Bagayat land. As the Special Land Acquisition Officer had not considered these facts and awarded the inadequate compensation. He had filed the reference under Section 18 of the Land Acquisition Act for grant of compensation towards his land, Well and the orange trees.

4. The original respondents have contested the claim on the ground that Special Land Acquisition Officer had considered the market value and awarded the compensation, therefore no interference is called for.

5. To substantiate the contention, the original claimant has adduced his evidence vide Exh.18. He also examined Sunil s/o Keshavrao Chandkapure who has issued the valuation report of Well and PW-3 Vishnu s/o Gangadhar Paradkar who had issued the valuation report in respect of the orange trees. Besides oral evidence he placed reliance on notice issued under Section 12(2) of the Land Acquisition Act Ex.19, copy of the objection Exh.20, 7/12 extract Exhs.21 to 27, Electricity Bill Exhs.28 and 29, map of his agricultural land, map of village Bhawarkhed, sale instance of village Navabpur Exh.34, map of Ner Taluka, the Government Notification regarding the valuation of the trees, certified copy of the Judgment in Land Acquisition Case No.108/2005 and Land Acquisition Case No.146/1999, Valuation Report Exhs.46, 49 and 50. The respondents have not adduced any evidence.

6. After appreciating the evidence, the Reference Court had observed that Nababpur village is adjacent to the Ner Taluka and therefore, the sale instances of village Nababpur is not helpful to the claimant to claim the rate similar to Exh.34. The claimant placed reliance on Judgment of Land Acquisition Case No.108/2005 wherein the rate was granted as Rs.1,25,000/- per hectare. The Reference Court has further considered the valuation reports which are issued by PW-2 and PW-3 and assessed the amount of compensation towards 952 tress as

Rs.3,500/- per tree. The trees which are smaller the Reference Court has awarded Rs.2250/- and against these smaller trees the amount awarded as Rs.1500/- per trees.

7. Being aggrieved and dissatisfied with the said Judgment the acquiring body – VIDC preferred this appeal on the ground that the compensation awarded by the Reference Court is excessive and exorbitant one. The evidence of Valuer is not believable and liable to be discarded. The compensation awarded for the trees is also excessive and exorbitant one. At the same time, the original claimant has also filed the cross-objection on the ground that the reference Court has awarded the compensation towards the land and the trees is inadequate and therefore, liable to be enhanced.

8. Heard learned Advocate Shri Dahat, for the appellant. He submitted that the compensation for the trees is to be awarded as per the guidelines issued by the Government by Notification dated 09.01.1986. He further submitted that the evidence of the Valuer PW-3 is not based upon any data and therefore, liable to be discarded.

9. Whereas, learned Advocate Shri Nakshane for respondent No.1 submitted that this Court in First Appeal No.821/2006 (State of Maharashtra, represented by the Collector, Yavatmal and others Vs. Ramkrishna s/o Tukaram Bhakre) while considering the compensation towards the orange trees in respect of village Bargaon, Taluka Ner considered the earlier Judgment and awarded the compensation at the rate of Rs.5,000/- per tree. Thus, on the ground of parity the claimant is also entitled to receive the compensation by the same rate. He submitted that, the appellant – acquiring body has not made out any case to show that the compensation awarded is excessive and exorbitant one. In support of his contention, he placed reliance on the decision of this Court in First Appeal No.821/2006 along with First Appeal No.836/2006 and along with First Appeal No.245/2008 decided on 20/06/2019. Judgment of the Reference Court in Land Acquisition Case No.146/1999 (Sukhdeo s/o Tukaram Bhakre Vs. The State of Maharashtra and others) decided on 03.05.2003 and First Appeal No.1636/2008 (State of Maharashtra Through the Collector, Nagpur and another Vs. Shri Anandrao s/o Rodbaji Tekade) and Cross objection No.4/2010 decided on 11/10/2018. First Appeal No.1050/2019 (Vidarbha Irrigation Development Corporation – through Executive Engineer, Minor Irrigation Division, Washim Vs. Sanjay Babarao Nemane and another) decided on 06.08.2019 wherein the rate towards the orange tree was granted to the extent of Rs.5000/- per tree. He further placed reliance on Panjabrao s/o Ganpatrao Borade Vs. State of Maharashtra and others reported in 2015 (6) Mh.L.J.69. First Appeal No.47/1998 (Deorao s/o Ganpatrao Gawande, (Dead) through Legal Heirs 1) Mohan Deorao Gawande and others Vs. The Collector, Yavatmal) decided on 5th October 2016, Radhey Sham Vs. The State of Haryana and Ors. reported in 2022 ALL SCR 2263 and Mehrawal Khewaji Trust (Registered), Faridkot and others Vs. State of Punjab and others reported in (2012) 5 SCC 432.

10. Having heard both the sides and on perusal of the record the point arises for the consideration is:

(i) Whether the award passed by Reference Court calls for any interference?

11. In the present appeal, the Judgment of the Reference Court in Land Acquisition Case No.95/2006 is under challenge. Land admeasuring 4 hectare 99 R. owned by the claimant was acquired for Kumbharpind Project. The Section 4 Notification was issued on 17.12.1998 and award was passed on 05.07.2002. By which Special Land Acquisition Officer has awarded the compensation at the rate of Rs.41,500/- per hectare. The claimant filed the Reference for seeking enhancement. The Reference Court after considering the evidence on record enhanced the amount of compensation for the acquired land at the rate of Rs.1,25,000/- per hectare. It further awarded the compensation at the rate of Rs.3500/- per orange trees for 952 trees, Rs.2250/- per orange trees for 176 trees and Rs.1500/- per orange tree for 242 trees. The acquiring body being aggrieved by the same filed an appeal as well as the original claimant has filed the cross-objection for enhancement. The original claimant has placed reliance on the sale deed of village Nababpur. It reveals that the village Nababpur is adjacent to the Taluka Ner whereas the land of the present claimant is situated in village Bhawarkhed which is at a distance of 6 Km. from village Ner. Admittedly, the sale instances from the village Bhawarkhed are not available and therefore, not filed on record. It is held by the Hon'ble Apex Court in Chindha Fakira Patil (D) through LRs Vs. The Special Land Acquisition Officer, Jalgaon reported in AIR 2012 SC 481 that the reference has to be decided on its own merit on the basis of evidence adduced in it. In Land Acquisition Case No.108/2005, the Reference Court has awarded the compensation at the rate of Rs.1,25,000/- per hectare on the basis of evidence adduced in it. The land involved in Land Acquisition No.108/2005 was of village Sindkhed, Taluka Ner. The acquiring body has not preferred any appeal against the said decision. In Land Acquisition No.146/1999 the Reference Court has awarded Rs.1,80,000/- per hectare for the Bagayat land. This Court in First Appeal No.821/2006 had considered the compensation in respect of the lands situated at village Borgaon which were acquired by the Notification dated 13.12.1996 i.e. prior to two years of the present acquisition, wherein the Reference Court has enhanced the rate of irrigated land to the extent of one hectare for Rs.1,80,000/- and for dry crop land the compensation was awarded at the rate of Rs.90,000/-. Considering the same, in the present case the compensation assessed by the Reference Court by considering the acquired land as a seasonally irrigated awarded the compensation at the rate of Rs.1,25,000/- which is just and reasonable one.

12. As far as the contention of the claimant in respect of valuation of the trees is concerned, the Reference Court has not accepted the entire report of the expert. It has taken into consideration the age of the orange trees and by applying the multiplier of 20 years awarded the compensation at the rate of Rs.3500/- for 952 orange trees which were fruit bearing trees. He has awarded Rs.2250/- for the

smaller trees which were 176 in number and the amount of Rs.1500/- was awarded smallest trees 242 in numbers.

13. The learned Advocate Shri Nakshane for the respondent No.1 placed reliance on the decisions of this Court in First Appeal No.821/2006 along with First Appeal No.836/2006 and along with First Appeal No. 245/2008 wherein the lands of village Borgaon was acquired prior to the present acquisition by passing award on 13.12.1996. This Court has considered the average income of Rs.200/- per tree for the period of 20 years and awarded the compensation by holding that the trees are situated in land fruit growing belt and awarded the compensation of Rs.5000/- per trees. In First Appeal No.1636/2008 with Cross-objection No.4/2010 wherein the land was situated at Mouza Khapri, Tahsil Narkhed, District Nagpur wherein also the compensation for orange trees was granted at the rate of Rs.5000/- per tree. In First Appeal No.1050 of 2019 wherein the land was situated in Pasarni, Taluka Karanja, District Washim wherein also this Court awarded the compensation of Rs.5000/- per tree. The Valuer who is examined by the claimant has visited the land on 17.12.1998 after issuance of Notification and considered the aspect of age of the trees and assessed the amount of compensation by holding that 1150 orange trees of six years. He considered Rs.200/- per tree and for smaller trees he had considered the value of Rs.44,000/- which were of two years age.

14. The Hon'ble Apex Court in the case of Bilquis Vs. State of Maharashtra and others, reported in (2018) 7 SCC 530 held that there is an ample material on record to show that there were orange trees which were about 4 to 5 years old. It is not in dispute that the orange trees would start yielding fruits from the 5th year. Since the orange plants were about to 4 to 5 years old the Reference Court was justified in observing that orange trees have just then started yielding fruits to the claimants. It is further observed by the Hon'ble Apex Court that even otherwise, this Court cannot ignore the fact that the trees at the age of 5-6 years were very much ripe for yielding orange fruits. Considering the observations of the Hon'ble Apex Court and the previous Judgments of this Court wherein by considering that the location of the land is situated in the fruit growing belt awarded the compensation at the rate of Rs.5000/- per tree. The same ratio is applicable in the present case also. Therefore, in so far as compensation for the orange trees is concerned, the Reference Court has not accepted the entire report of the expert. It has taken into consideration the age of the orange trees that would yield the fruits to be 20 years. On the basis of average income of Rs.200/- per tree for a period of 20 years and assessed the compensation for each orange tree at the rate of Rs.4000/- per tree, but awarded Rs.3500/- for 952 trees which were of six years of age. The land of the original claimant is situated in the fruit growing belt wherein orange trees are acquired amount of Rs.5000/- per tree is normally awarded. Considering the location of the land, the claimant is also entitled to get the compensation at the rate of Rs.5000/- per tree for 952 orange trees.

15. Similarly the amount granted for the smaller trees, Well is also found to be reasonable requiring neither any addition or reduction. In the light of the material brought on record by the parties, it is found that the Reference Court by taking a reasonable view of the matter has awarded a fair compensation for the land, Well and the smaller tree. In view of the evidence adduced the amount of compensation is to be enhanced for 952 orange trees which were six years of age and fruit bearing trees. Therefore, the claimant is entitled to receive the compensation at the rate of Rs.5000/- per tree for 952 orange trees. Accordingly, the point is answered as claimant is entitled to receive enhancement compensation of Rs.5000/- per tree for 952 orange trees and rest of the findings recorded by the Reference Court is reasonable and do not warrant in modification.

16. In the light of the aforesaid discussion, the Judgment and Award of the Reference Court deserves to be modified only to the extent that the claimant is entitled to receive compensation at the rate of Rs.5000/- for 952 orange trees. Rest of the award deserves to be maintained.

17. The appeal filed by the acquiring body stands dismissed with no order as to costs.

18. The cross-objection filed by the claimants is partly allowed.

19. The acquiring body shall calculate the amount of compensation and shall deposit the enhanced amount of compensation along with the accrued interest in accordance with the Judgment of the Reference Court.

20. The claimant is at liberty to withdraw the balance amount of compensation on depositing the same with accrued interest.