

(2024) 01 BOM CK 0066
In the Bombay High Court
Case No : First Appeal No. 866 Of 2013

Vidarbha Irrigation Development

APPELLANT

Vs

Digambar Balwantrao Kadu And Others

RESPONDENT

Date of Decision : 22-01-2024

Acts Referred:

Land Acquisition Act, 1894 — Section 54

Citation : (2024) 01 BOM CK 0066

Hon'ble Judges : Anil L. Pansare, J

Bench : Single Bench

Advocate : P. B Patil, N. Bhide, A. Lohiya, S. C. Joshi

Final Decision : Partly Allowed

Judgement

Anil L. Pansare, J

1. Appellant-Vidarbha Irrigation Development Corporation, Upper Wardha Canal Division No.3, Dhamangaon Railway, District Amravati (For short, "VIDC") has preferred instant appeal under Section 54 of the Land Acquisition Act, 1894, being aggrieved by judgment and award dated 02.06.2011 passed by Jt. Civil Judge Senior Division, Amravati in Land Acquisition Case No. 84/2000.

2. The facts necessary to decide the appeal are as under. VIDC has acquired 1.20 HR land belonging to the respondent nos.1 to 8 (original claimants) for constructions of canal at mouza Warud (Bagaji), Dhamangaon Railway, District Amravati. The Land Acquisition Officer passed an award dated 13.07.1998 and granted compensation at the rate of Rs.21,000/- per hectare. The respondent nos.1 to 8 filed reference before the trial court seeking enhancement of compensation at the rate of Rs.1,00,000/- per hectare.

3. Learned counsel for the appellant has invited my attention to the award passed by the trial court. It has noted sale instances at Exhs.-37 and 38, which are dated 21.04.1994 and which show that market value of the dry crop land was Rs.50,000/- per hectare. The court has then taken note of the judgment and

award dated 27.02.2008 passed by Second Ad hoc Additional District Judge below Exh.-39 in Land Acquisition Case No.77/2000 and considering the fact that the land was having perennially irrigation facilities, granted compensation at the rate of Rs.1,25,000/- per hectare. The trial court noted the aforesaid facts to arrive at a conclusion that the dry crop land would fetch the rate of Rs.60,000/- per hectare whereas irrigated land would fetch the rate at Rs.1,25,000/- per hectare.

4. So far as claim of respondent nos.1 to 8 is concerned, the trial court noted that the land bearing Gat No.420, is having well and land bearing Gat No.373 is having irrigation facilities. The court further noted that merely because a well has been dug in the field, one cannot presume that the entire land is perennially irrigated. The trial court was of the view, and rightly so, that the claimants have to adduce cogent evidence to substantiate the claim of irrigated land.

5. The respondent nos. 1 to 8 have relied upon 7/12 extract (Exh.-34) in respect of the land bearing Gat No.420. It shows that out of 9.60 HR land, only 0.60 HR land was under irrigation. Orange trees were planted in the said portion. The trial court noted that 7/12 extract itself show that the other crops in the fields were dry crop and, therefore, found no substance in the contention of respondent nos.1 to 8 that their land is perennially irrigated land. Despite such status, the trial court, in paragraph 18, has arrived at following conclusion.

"18. From the aforesaid discussion and documents referred, it is very much clear that market value of dry crop land on the date of notification was Rs.60,000/- per hectare and for irrigated land Rs.1,25,000/-. Since acquired land of the petitioners in both the claim petitions is treated by me as seasonally irrigated and therefore market value of the acquired land could be one and half of dry crop land. It comes to Rs.90,000/- per hectare. According to me, the market value assessed by me is just and reasonable and therefore, I record my findings accordingly in the affirmative to the issues."

6. Counsel for the appellant contends that the trial court has, without assigning any reason, jumped to the conclusion that the land under question is seasonally irrigated and arrived at the rate of Rs.70,000/- per hectare. This approach has been criticized by the appellant.

7. As against, learned counsel for respondent nos.1 to 8 submits that the trial court has noted existence of a well and, therefore, it was fully justified in treating the land as seasonally irrigated.

8. I do not find substance in the submissions made by the counsel for the respondent nos.1 to 8. The 7/12 extract (Exh.-34) is the only document which the respondent nos.1 to 8 have relied upon in respect of their claim that the acquired land is an irrigated land. Perusal of 7/12 extract shows that the predecessor of respondent nos. 1 to 8 has taken two crops namely; Cotton and Toor. Cotton was sown in the area admeasuring 9.60 HR and Toor in the area of 1.20 HR. This area admeasuring 9.60 and 1.20 HR is shown under the head of

“unirrigated land”. The 7/12 extract further indicates that the orange trees were planted in the area admeasuring 0.60 HR, which is mentioned under the head of irrigated land. Admittedly, the acquired land was not forming part of the irrigated land. In the circumstance, merely because there existed well and orange trees, would not make the entire land to be seasonally irrigated.

9. The counsel for the petitioner has relied upon judgment of Coordinate Bench of this court in the case of Sidhu s/o Jaiwanta Jare Vs. State of Maharashtra, reported in 2019 (5) Mh.L.J. 384, wherein the court held that mere existence of well would not itself be sufficient to conceive that the acquired lands were irrigated lands.

10. The trial court, therefore, has committed an error in holding that the acquired land was seasonally irrigated. Mere existence of well would not make a land seasonably irrigated. The 7/12 extract, which is relied upon by respondent nos.1 to 8 themselves, clearly indicate that the acquired portion of land was dry land. The finding of trial court, therefore, is contrary to the record, which is liable to be quashed and set aside. Consequently, considering the evidence led before trial court, the acquired land is held to be dry crop land. The respondent nos.1 to 8 will be entitled to receive compensation at the rate of Rs.60,000/- per hectare.

(i) The appeal is partly allowed.

(ii) Judgment and decree dated 02.06.2011, passed by Jt. Civil Judge Senior Division, Amravati, in Land Acquisition Case No.84/2000 is quashed and set aside.

(iii) Respondent nos. 1 to 8 are entitled to compensation at the rate of Rs.60,000/- per hectare. The trial court's decree stands modified accordingly. Rest of the contents of the decree stand intact.

(iv) The appeal is disposed of in the above terms. No order as to costs.