
(2017) 05 BOM CK 0010
In the Bombay High Court
Case No : 359 of 1999

Zumber Dagadu Chemate, & Ors.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-05-2017

Acts Referred:

Citation : (2017) 05 BOM CK 0010

Hon'ble Judges : V. K. Jadhav

Bench : SINGLE BENCH

Advocate : A. B. Gatne, S. P. Sonpawle

Judgement

1. Being aggrieved by the common judgment and award passed by the Joint Civil Judge Senior Division, Ahmednagar dated 27th April, 1998 in LAR No.199 of 1990 alongwith connected land acquisition reference petitions, the original Claimants in LAR No.199 of 1990 have preferred First Appeal No.444 of 1999, original Claimants in LAR No.200 of 1990 have preferred First Appeal No.359 of 1999 and the original Claimant in LAR No.202 of 1990 has preferred First Appeal No.358 of 1999. 2 Brief facts giving rise to the present appeals are as follows: a) The lands owned and possessed by the original Claimants came to be acquired by the Government for the purpose of construction of Ranjani Percolation Tank, Taluka and District Ahmednagar. Section 4 notification was published on 27th October, 1983 and the Special Land Acquisition Officer has awarded the compensation for the acquired lands vide award bearing No. LAQSR356/ 85 dated 1st July, 1987 at the rate of Rs.5,000/per Hectare by treating all the lands as Jirayat lands. However, the Special Land Acquisition Officer has not awarded any compensation for the acquired wells, Tals and fruit bearing trees. Being aggrieved by the same, the Appellants / original Claimants have filed above mentioned land acquisitions reference petitions for grant of compensation at the enhanced rate. Initially, the Claimants have claimed the compensation at the rate of Rs.12,000/per Acre, however, amended the claim for the acquired land at Rs.30,000/per Acre corresponds to Rs.750/per Are. It has been contended by the

Appellants / Claimants in their respective reference petitions that the Special Land Acquisition Officer has failed to appreciate the sale instances of the comparable lands taken place at the relevant time of the acquisition. The Special Land Acquisition Officer has also failed to appreciate the quality and fertility of the acquired lands. It has also been contended that the acquired lands were wrongly classified as Jirayat lands and in fact, irrigation facility was available on the water of well. However, the Special Land Acquisition Officer has not taken into consideration the same. It has also been contended that the Special Land Acquisition Officer has not awarded any compensation for the fruit bearing trees, Tals and wells. b) Respondent / State has strongly resisted those reference petitions by filing the written statement. It has been contended that the Special Land Acquisition Officer has personally visited the lands under acquisition and verified its quality. The Special Land Acquisition Officer has also collected relevant sale instances and classified the lands as Jirayat as well as irrigate lands on the basis of the assessment of land revenue. Thus, the Government has already paid adequate compensation to the Appellants / original Claimants.

c) The Appellants / Claimants have adduced oral and documentary evidence in support of their contentions. Respondent / State has not adduced any evidence. The learned Judge of the Reference Court has partly allowed the said reference petitions by common judgment and award and awarded the compensation to the acquired lands at the enhanced rate of Rs.12,500/to Rs.15,000/per Hectare. The Reference Court has also awarded the compensation for the fruit bearing trees such as Jambhul trees and mango trees and the compensation for wells and Tals constructed by the Appellants / Claimants in their respective lands. Hence, these appeals.

3 The learned counsel for the Appellants / Claimants submits that the Reference Court has awarded meager compensation at the enhanced rate for the acquired lands. The learned counsel submits that the acquired lands of the Appellants / Claimants were irrigated lands. However, the Reference Court has not considered the same and awarded the compensation erroneously by treating the acquired lands as Jirayat lands. The learned counsel submits that the Appellants / Claimants have placed their reliance on two sale instances Exhibits 33 and 53 respectively. However, the Reference Court has not considered the same. The learned counsel submits that the Reference Court has awarded the compensation for fruit bearing trees, wells and Tals at a very meager rate. The Appellants / Claimants have adduced common evidence in LAR No.199 of 1990 and examined the witnesses to substantiate their contentions about the claim of compensation in respect of fruit bearing trees, wells and Tals. Even the Reference Court has committed mistakes in mentioning the trees in the respective acquired lands, which is the subject matter of the aforesaid land acquisition reference petitions. The learned counsel submits that so far as LAR No.199 of 1990 is concerned, 11 Jambhul trees came to be acquired alongwith the land. However, the Reference Court has erroneously considered 5 Jambhul trees and even though there are no mango trees in the lands, which are subject matter of LAR No.199 of 1990,

awarded the compensation for the mango trees. The Reference Court has committed similar mistakes in other land acquisition reference petitions also. The learned counsel submits that as per the evidence led by the Appellants / Claimants, the Claimants are entitled for more amount for the trees, wells and Tals compare to the compensation awarded by the Reference Court. The Reference Court has not at all considered the evidence led by the Claimants on this point.

4 The learned AGP for the Respondent / State submits that the Reference Court on the basis of the evidence adduced by the Claimants, observed that some of the lands under acquisition are Jirayat lands and some of the lands are irrigated under the well of water. Thus, considering the evidence on record, the Reference Court has rightly held that the lands under reference petitions, which are subject matter of present appeals are the Jirayat lands. So far as the sale instances Exhibits 33 and 53 are concerned, sale instance Exhibit 33 executed after Section 4 notification of the acquired lands. Both the sale instances are from different villages and the Appellants / Claimants have failed to prove that those lands are similar to the acquired lands. Even though the Reference Court has observed that those sale instances Exhibits 33 and 53 respectively are not completely comparable, considered those sale instances to find out the trend in rising prices of the agricultural lands in the said area. The Reference Court has awarded just and reasonable compensation for the acquired lands. The learned AGP submits that the Reference Court has rightly discarded the evidence of private valuer in respect of the trees, wells and Tals for the reason that the said valuer has carried out the inspection during the pendency of the land acquisition reference petitions before the Reference Court and that too near about 10 years approximately after possession of the acquired lands was taken by the Government. Even the Reference Court has observed that if the acquired lands are submerged in water, there is no question of carrying out any inspection after such a long gap. The Reference Court has, however, believed the bare words of the Appellants / Claimants and accepted existence of the trees and further awarded just and reasonable compensation for the trees, wells and Tals. There is no substance in the appeals and all the appeals are liable to be dismissed.

5 On perusal of the evidence and the common impugned judgment and award passed by the Reference Court, it appears that on the basis of the evidence adduced by the parties, the Reference Court has rightly awarded the compensation at the enhanced rate by treating the acquired lands as Jirayat lands. Even though the sale instances Exhibits 33 and 53 respectively are from different villages and even though the Appellants / Claimants have failed to bring to the notice of the Reference Court the distance between the acquired lands and the lands under sale instances, the Reference Court has considered those sale instances to find out the exact market price of the agricultural land in the said area. The Reference Court has awarded just and reasonable compensation for the acquired lands. I do not find any fault in it.

6 So far as the compensation awarded for the fruit bearing trees and Tals are concerned, in my opinion, the Reference Court has not considered the evidence led by the Appellants / Claimants in its proper perspective. So far as the compensation awarded for the well is concerned, the Reference Court has awarded the compensation for the well as claimed by the Appellants / Claimants and as such, no interference is required in that.

7 The Appellants / Claimants have examined Witness No.5 Gopinath Gaikwad. Said Witness Gopinath Gaikwad used to purchase fruits by auction and then used to sell the same on retail basis. He was doing that business. According to him, he had purchased the fruits of 11 Jambhul trees in the acquired land owned and possessed by Appellant / Claimant (Zumber) for an amount of Rs.53,000/in the year 1981 and also in the same year, purchased the fruits of 8 mango trees for Rs.55,000/. The receipt of auction purchase is produced on record and marked Exhibits 28 and 27 respectively. It appears that the Reference Court has not considered the evidence of Witness No.5 Gopinath Gaikwad in its proper perspective and awarded the compensation at the rate of Rs.3,000/per Jambhul tree and Rs.5,000/per mango tree. Considering the evidence of Witness No.5 Gopinath Gaikwad, it would be just and appropriate if the compensation is granted at the rate of Rs.5,000/per Jambhul tree and Rs.7,000/per mango tree.

8 So far as the construction of Tals in the acquired lands is concerned, the Appellants / Claimants have examined Witness No.4 Ambadas Thorat, who has constructed the wells and Tals at village Ranjani. He was a registered contractor of B&C Department. A copy of his registration certificate is also produced on record. According to him, he has constructed 3 Tals in the acquired land of Zumber at the rate of Rs.3,000/each. He has also issued a receipt to that effect, which is marked as Exhibit 27. He has constructed those Tals on 11th April, 1979. In the same year, he has also constructed a Tal in land Gat No.96 at the same cost. He has deposed that in the year 1981 and onwards, he has again constructed Tals in the acquired land Gat No.45 and Gat No.100 at the cost of Rs.9,000/and Rs.22,500/respectively. It, thus, appears from his evidence that he has constructed said Tals at the rate in between Rs.2,500/to Rs.3,000/. In view of the same, the Appellants / Claimants are entitled for compensation for each Tal at the rate of Rs.2,750/instead of Rs.2,000/as awarded by the Reference Court.

9 It further appears from the common impugned judgment and award passed by the Reference Court that the learned Judge of the Reference Court has committed the mistakes in mentioning the number of trees in the acquired lands. The learned Judge of the Reference Court has believed the words of the Appellants / Claimants about existence of the trees. However, while granting the compensation, awarded the compensation for the trees in respect of a particular Gat number when the said trees are not in existence in the said acquired land. Thus, the said mistakes can be corrected by mentioning the existence of the trees in the respective acquired lands through the following chart:

Sr. No.

L.A.R. Number Existence of trees Rate as awarded by this Court

1. LAR No.199 of 1990 11 Jambhul trees Rs.5,000/per Jambhul tree

2.

LAR No.200 of 1990 8 mango trees Rs.7,000/per mango tree

3. LAR No.202 of 1990 8 mango trees Rs.7,000/per mango tree

10 Thus, the Appellants / Claimants are entitled for the compensation at the rate of Rs.5,000/per Jambhul tree and Rs.7,000/per mango tree as per the chart referred above and also entitled for the compensation at the rate of Rs.2,750/per Tal alongwith all statutory benefits as awarded by the Reference Court.

11 The judgment and award passed by the Reference Court requires modification to that extent. Hence, the following order: ORDER

I. First Appeal No.444 of 1999 (Zumber Dagadu Chemate Vs. The State of Maharashtra), First Appeal No.358 of 1999 (Rewaji Balu Chemate Deceased His L/R, Ashok Rewaji Chemate Vs. The State of Maharashtra) and First Appeal No.359 of 1999 (Rewaji Balu Chemate Deceased His L/R, Ashok Rewaji Chemate and others Vs. The State of Maharashtra), are hereby partly allowed with proportionate costs.

II. The common judgment and award passed by the Joint Civil Judge Senior Division, Ahmednagar dated 27th April, 1998 in LAR Nos.199, 200 and 202 of 1990, is hereby modified in the following manner to the extent of compensation awarded for the fruit bearing trees in terms of the chart below and the compensation for Tals at the rate of Rs.2,750/per Tal with all the statutory benefits as awarded by the Reference Court.

Sr. No.

L.A.R. Number Existence of trees Rate as awarded by this Court

1. LAR No.199 of 1990 11 Jambhul trees Rs.5,000/per Jambhul tree

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LAR No.200 of 1990 8 mango trees .Rs.7,000/per mango tree

3. LAR No.202 of 1990 8 mango trees Rs.7,000/per mango tree

III. Rest of the judgment and award stands confirmed.

IV. Award be drawn up as per the above modification.

V. Needless to say that if any amount is paid as per the judgment and award passed by the Reference Court, the same shall be the part of the modified award.

VI. All the appeals are accordingly disposed of.