

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD**

FIRST APPEAL NO.144 OF 1999

Hukumchand s/o Manikchand Khivsara,
Age 56 years, Occu. Agriculture,
R/o Tondapur, Taluka Jamner,
District Jalgaon ..Appellant

Versus

The State of Maharashtra ..Respondent

Mr B.K. Pawar, Advocate h/f Mr A.B. Kale, Advocate for appellant
Mr P.P. More, A.G.P. for respondent

- WITH -

FIRST APPEAL NO.245 OF 2008

The State of Maharashtra ..Appellant

Versus

Hukumchand s/o Manikchand Khivsara,
Age 50 years, Occu. Agriculture,
R/o Tondapur, Taluka Jamner,
District Jalgaon ..Respondent

Mr P.P. More, A.G.P. for respondent
Mr B.K. Pawar, Advocate h/f Mr A.B. Kale, Advocate for appellant
(appeared in F.A.No.144 of 1999)

CORAM : N.W. SAMBRE, J.

DATE : 22nd July 2015

PER COURT

1. First Appeal No.144 of 1999 is preferred by the land owner feeling aggrieved by the judgment delivered by the reference Court under Section 18 of the Land Acquisition Act. So far as Appeal No.245

of 2008 is concerned, the same is preferred by the State Government questioning the award of compensation in favour of present appellant – land owner, as according to State, the award of compensation is at exorbitant rate.

2. The facts as are necessary for deciding the present appeals are as under :

3. The appellant – land owner owns land Gut No.33 at village Tondapur ad measuring 3 hectare 63-R.

4. The land in question was notified by the Land Acquisition Officer on 8th August 1980 for construction of Tandapur dam. Out of land held by the appellant, 10-R land is reported to be potkharab whereas in the balance land, 40 custard apple trees and 9 bore-fruit bearing trees having revenue assessment of Rs.9.45 ps.

5. The Land Acquisition Officer passed award on 19th December 1982 and awarded compensation of Rs.57952/- as against the claim of Rs.2,42,125/- i.e. Rs.35,320/- for land at the rate of Rs.10,000/- per hectare and Rs.22,632/- for 40 custard appeal trees and 9 bore-fruit bearing trees.

6. The awarded amount was accepted by the land owner under protest and had decided to file reference for enhancement of compensation for total claim of Rs.1,35,125/- towards the market price of the land and Rs.80,000/- towards the custard appeal trees and bore-fruit bearing trees. The appellant as such, after deducting the

amount of compensation, received from the Land Acquisition Officer sought Rs.1,84,123/- with 15% interest in addition to solatium.

7. The claim was resisted by the acquiring body by filing written statement at Exh.5 and it was urged that the amount awarded by the Special Land Acquisition Officer was based on sound and cogent reasons.

8. In the light of the pleadings, the reference Court framed the issues at Exh.6 and 7 to analyse the evidence brought before it and ordered enhancement of compensation qua fruit bearing trees, however, maintained the order of Land Acquisition Officer of compensation pertaining to the land under acquisition. The reference Court awarded compensation at enhanced rate of Rs.1,000/- for custard apple trees, Rs.1,000/- each for seven bore-fruit bearing trees and as such, declared that the claimant will be entitled for Rs.42,000/- towards 42 bore-fruit bearing trees and after deducting Rs.22,632/- as already awarded him Rs.19,368/- towards bore-fruit bearing trees. Feeling thereby, the present appeal.

9. In Appeal No.245 of 2008, it is claimed by the State Government that the enhancement as ordered by the reference Court enhancing the compensation for bore-fruit bearing trees is without any basis and as such, sought setting aside of the order of enhancement of compensation to that extent.

10. The learned Counsel for the appellant – land owner while seeking enhancement of compensation for land, has invited attention

of this Court to the testimony of P.W.1 Hukumchand at Exh.26. It is brought on record through his testimony that the village Pahur and Wakod are situated at about 6 Kms. Distance from the field under acquisition. The claimant then produced on record the certified copy of the sale deed of Gut No.33 of Pahur whereby one Mr B.S. Borse purchased 28-R land from Ramkrushna for Rs.9,000/-. The certified copy of said sale deed is at Exh.30 and the 7/12 extract in respect of the said land is at Exh.31. It is claimed that the said sale-deed is required to be taken into account as the land is in close proximity with the land under acquisition. The attention of this Court is also invited to compensation awarded in L.A.R.N.108/1988 decided by the Civil Judge, Senior Division, Jalgaon on 2nd January 1992. The certified copy of the same is at Exh.66. The sale deed Exh.30 appears to have been referred in the said L.A.R. My attention is further invited to the fact that while dealing with the said L.A.R. No.108/1988, the learned Civil Judge, Senior Division , Jalgaon was pleased to hold that Gut No.33 of Pahur is situated on Aurangabad-Jalgaon road and there is banana plantation in the said field. In view of fertility of land, the price of the land at Pahur is on higher side as the cultivation of crop of banana, availability of market was appreciated. It is claimed that the said aspect was misread in the matter of price of the said evidence i.e. Ex.30. It is further urged that the sale deed Exh.32 whereby one Bansilal has sold Gut No.407, ad measuring 94 R for a consideration of Rs.25,000/- was also required to be taken into account of which 7/12 along with certified copy was placed on record at Exhs.33 and 34. The said sale instance is also referred to in the judgment at Exh.66,

referred earlier. The learned Counsel then invited my attention to the fact that Gut No.407 of village Wakod is adjoining to his field and as such, the said sale instance is required to be taken into account.

11. It is not in dispute that the appellant/claimant owns Gut No.307 which is claimed to be in close proximity with the land Gut No.407.

12. So far as the above referred submissions of learned Counsel for the appellant are concerned, the same are denied by learned A.G.P. while opposing the claim for enhancement of compensation as according to him, the reference Court has recorded cogent reasons for discarding both the sale instances, i.e. Exh.30 and 32. He would also urge that the said aspect is appropriately dealt with by the reference Court while deciding the L.A.R.No.108/1988, which is produced at Exh.66. According to him, the appeal is liable to be dismissed.

13. In addition to above, learned A.G.P. would urge that the enhancement granted qua fruit bearing trees is without any basis.

14. From the above referred submissions, this Court is required to decide as to whether the enhancement of compensation for fruit bearing trees and denial of enhancement qua the land by the reference Court is just and proper.

15. So as to consider the claim, this Court with the assistance of both the Counsel, has perused and gone through the evidence which was placed on record so as to establish the case for enhancement. It is required to be noted that Exh.26 is an evidence of Hukumchand who has deposed in support of the applicability of sale instances

Exh.30 and 32. if we examine both the exhibits, which are produced in the form of evidence and in the form of certified copy, the same are required to be accepted in evidence, as it is pursuant to provisions of Section 51-A of the Land Acquisition Act.

16. However, mere acceptance of said sale deeds Exh.30 and 32 does not mean that the said sale deeds have direct bearing over the enhancement of the claim as sought for. Unless the claimant/appellant establishes a case by appropriate evidence that the sale instances cited by virtue of Exh.30 and 32 were in relation to the land which are located in close vicinity of the land under acquisition, then only the said sale instances are required to be accepted. The reference Court has analysed the location of both the lands covered under the sale deeds Exh.30 and 32 and has noted both these lands are located at comparatively distant places i.e. around 4 to 5 Kms. Away from the land under acquisition. Apart from above, it is required to be noted that the land covered under Exh.30 and Exh.32 i.e. Gut No.33 of Pahur was irrigated land whereas the land in case of appellant is Jirayat land. Apart from above, it is required to be noted that the said land is situated adjacent to Aurangabad-Jalgaon State highway, whereas the land of the present appellant is located at somewhat distant place i.e. almost 4 to 5 Kms. away from Pahur as such, said sale instance Exh.30 has hardly any applicability for deciding the claim for compensation.

17. So far as the sale instance Exh.32 is concerned, the said land bearing Gut No.407 is situated at Wakod and is Jirayat land. The said

village Wakod is also located on the above referred State highway. It is required to be noted that the land of the appellant is not located on the State highway. From the evidence of P.W.1 Hukumchand, it could be inferred that the land Gut No.407 was a dry crop land. It is further brought on record that the land of the appellant is located at Tondapur and Tondapur is not on the Aurangabad-Jalgaon State highway. Having regard to the location of the land of the appellant and that of one covered under sale instance Exh.32, the proximity was at all not established by the appellant to that of the land covered under the sale deed and the one under the acquisition. It is required to be noted that the distance between the land bearing Gut No.407 covered under sale instance Exh.32 the land Gut No.307 owned by the appellant is about 4 Kms.

18. Incidentally, in the present case, the respondent has examined witness Sadashiv, who has stated that distance between Pahur and Tondapur is about 8 to 9 Kms.

19. In view of above set of evidence, the sale instances which were relied upon by the appellant seeking enhancement of the claim were of hardly any assistance to the appellant, as both those sale instances were of the lands which are distantly located from the land under acquisition. The other incriminating circumstances which requires consideration for rejecting the appeal is location of both the lands covered under Exh.30 and Exh.32 on the Aurangabad-Jalgaon State

highway whereas, the appellant's land is located quite inside the above State highway.

20. In my opinion, the appreciation, as is permissible within the scope of Section 18 of the Act qua the sale instances was rightly done so by the reference Court and the reference Court as such rejected the claim for enhancement.

21. The rejection of claim for enhancement with the above referred background, in my opinion, is just and proper.

22. So far as the challenge raised by the State Government to the enhancement granted for the fruit bearing trees is concerned, the said enhancement is supported by reference Court with cogent reasons and the evidence to that effect brought on record.

23. The enhancement granted, in my opinion, is just and proper. In the facts of the circumstances, no case for interference is made out. The appeals fail, stand dismissed.

(N.W. SAMBRE, J.)

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