

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

First Appeal No. 1257 of 2004

* The State of Maharashtra
Through Collector, Osmanabad. .. **Appellant.**

Versus

- 1) Namdeo s/o Kisan Humbe,
died through legal representatives
- 1-A) Indirabai w/o Namdeo Humbe,
Age 75 years,
Occupation : Household,
R/o Ieet, Taluka Bhoom,
District Osmanabad.
- 1-B) Khanderao S/o Namdeo Humbe,
Age 53 years,
Occupation : Service,
R/o As above.
- 1-C) Dasrao S/o Namdeo Humbe,
Age 50 years,
Occupation : Agriculture,
R/o As above.
- 1-D) Bajirao S/o Namdeo Humbe,
Age 48 years,
Occupation : Service,
R/o As above.
- 1-E) Bhaskar S/o Namdeo Humbe,
Age 46 years,
Occupation : Service,
R/o As above.
- 1-F) Rajabai @ Wanmala Chatrabhuj
Shinde,
Age 47 years,

Occupation : Household,
R/o Bavi, Taluka Vashi,
District Osmanabad.

- 2) Chandrabhagabai w/o Bhagwan Humbe,
Age Major,
Occupation : Agriculture
R/o Ieet, Taluka Bhoom,
District Osmanabad.
- 3) Sambhaji s/o Shivaji Humbe,
Age Major,
Occupation : Agriculture,
R/o As above.
- 4) Bhimrao s/o Kishanrao Humbe,
Age Major,
Occupation : Agriculture,
R/o As above.

.. Respondents.

Shri. G.O. Wattamwar, Assistant Government Pleader, for
appellant.

Shri. Amit T. Ghute, Advocate for respondent No.1-B to 1F,
2 to 4.

CORAM: T.V. NALAWADE, J.

DATE : 4th DECEMBER 2015

JUDGMENT:

- 1) The appeal is filed by the State to challenge the
judgment and award of Land Acquisition Reference
No.129 of 1995 which was pending in the Court of the

Civil Judge, Senior Division, Osmanabad. The Reference Court has enhanced the amount of compensation fixed by the Land Acquisition Officer in respect of the land and mango trees and the Reference Court has granted compensation in respect of 107 sandal trees when nothing was given in respect of sandal trees. Heard learned Assistant Government Pleader for the appellant and the learned counsel for the respondents.

2) The land Gat Nos.522, 520 and 521 situated at village Ieet, Tahsil Bhoom, District Osmanabad belonging to the present respondents are acquired for irrigation project. Notification under section 4 of the Land Acquisition Act was published on 11-3-1990. The Special Land Acquisition Officer granted compensation at the rate of Rs.32,000/- per hectare. He granted compensation in respect of 20 mango trees. He granted compensation in respect of some structures present in the land and the total compensation of Rs.12,59,166/- was granted and the statutory benefits provided on this amount are also given.

3) Present respondents were not satisfied with this award and they filed the Reference. They contended that the market price of their land was at least Rs.1,00,000 per acre. It is their case that their land was of good quality and it was black cotton soil and the soil was upto the depth of 25 feet. It is their case that they had improved the condition of the land by leveling and by supplying manure and they were taking two crops every year and they were getting Rs.20,000/- per acre per year as income from the agriculture. They contended that they are entitled to get price at the rate of Rs.one lakh per acre.

4) It is the case of the respondents, original claimants that there there 3 wells in the acquired lands and they had spent at least Rs. Two lakh for digging the two wells and they had spent one Rs. one lakh for digging the third well. It was contended that, the Special Land Acquisition Officer ought to have granted compensation in respect of the three wells. They contended that they had constructed one *taal* before starting of the acquisition and it was in existence in Gat No.521 and 522 and it was

having length of 1000 ft. It is contended that in respect of this *taal* the Land Acquisition Officer ought to have granted Rs. 8,00,000/-. They contended that there were 38 mango trees in the land and they were getting income of Rs.50,000/- per annum from these trees and so they are entitled to Rs.7.5 lakh as compensation in respect of these mango trees. They had contended that there were other trees like *Ber* trees which were fruit bearing and there were some tamarind trees also and in respect of those trees they are entitled to Rs.1.5 lakh. They had contended that they are entitled to get Rs.75,000/- in respect of cattle shed and they are entitled to get Rs. Three lakh in respect of 120 sandal trees (*chandan* trees). They had contended that there was *Gurhal*, the place where jaggery is prepared and for that they had spent Rs.1.5 lakh but nothing is paid in respect of that structure.

5) The State Government opposed the application by filing written statement. The State Government contended that the claim was not filed in time. It was also contended that as per quality and fertility and also market price of the land, compensation was paid in respect of the

land and it is reasonable and adequate compensation.

6) Issues were framed by the Reference Court on the basis of the aforesaid pleadings. Both the sides gave evidence.

7) The main claim was in respect of the land as the area of more than 7 hectares was acquired. Bhimrao, claimant examined himself and he gave evidence that the market price of the land of his village at the relevant time was at least Rs. one lakh per acre. The claimant relied on two sale instances. One sale instance was of 8 R portion and it was sold for the consideration of Rs.12,000/- and the other sale instance was of 1 acre (40 gunthas) and this land was sold for Rs.40,000/-. The lands of the two sale instances are at a distance of half kilometer and one kilometer from the land of the respondents. Certified copy of sale deed of the first instance was produced and Index No.2 register maintained by the Sub Registrar was produced and they were at Exhibits 18 and 19. Both the transactions are pre-section 4 notification. There was nothing to create doubt about genuineness of these transactions and so the Reference Court has considered

these transactions as comparable sale instances. The vendor of the second sale instance is examined by the present respondents before the Reference Court. Vendor of the first sale instance who purchased 8 R portion for Rs.12,000/- gave some admissions that he has purchased this portion for his convenience. The Reference Court considered the circumstances like existence of *Chulwan*, site created for preparing jaggery appearing in "E" Statement of the Land Acquisition Officer. Considering the other facilities like *taal* and existence of three wells, the Reference Court presumed that the lands had facility of irrigation. Though as per the first sale instance the Reference Court could have presumed that value of the lands of that locality per acre was Rs.60,000/-, the Reference Court has presumed the value as Rs.50,000/- per acre. It appears that some matters filed in respect of the acquisition made for the same project were already decided and copies of the decisions were on the record. Even if it is presumed that said decision had not attained finality at the relevant time, the aforesaid record is sufficient to prove that the market value of the land of the present respondents was at least Rs.50,000/- per acre.

There is nothing in rebuttal in respect of this market value. The award prepared by the Special Land Acquisition Officer shows that he considered the land revenue and he prepared groups of the lands as per the land revenue which is fixed on the basis of the quality of the land and he ascertained the value. Though in the award, it is mentioned that he considered some sale instances of that village those sale instances do not appear in the award. Thus, there was sufficient material for the Reference Court to give finding that the market value was at least Rs.50,000/- per acre. There is no possibility to interfere in this finding of the Reference Court.

8) For getting enhanced compensation in respect of mango trees and for getting compensation in respect of sandal trees, one witness Vyankat Ghogre is examined. Though he has given his occupation as valuer his evidence does not show that he had knowledge or experience of valuation of the trees. Further the figures of the number of the trees which he found in the land do not tally with the figures from "E" Statement and the revenue record.

No revenue record is produced by the claimants to show that more mango trees were in the field than shown in the "E" Statement and there were really sandal trees in the land. This valuer is not Government approved valuer. In view of these circumstances it was necessary for the present respondents, original claimants to give some convincing evidence to get enhanced compensation. The evidence of valuer in respect of trees is not at all convincing and there is no support of other circumstances. The report prepared by him does not show the basis for ascertaining the value and it shows only the number of trees, approximate age and the years for which the trees are capable to give fruits. The other particulars which the expert is expected to note are not there for ascertaining the age etc. In view of these circumstances, the report cannot be accepted. Generally farmers do not plant, cultivate sandal trees and some times they grow naturally in the land. However, there is nothing on the record like revenue record. It is difficult to believe that there were 107 sandal trees. The evidence of the so called expert that there were 120 sandal trees has no basis. The Reference Court has held that there were 107 sandal

trees. Thus, the award in respect of enhancement of compensation in respect of mango trees and the award and compensation in respect of 107 sandal trees cannot sustain in law.

9) Ramchandra Baraskar is examined by the owner of the land to prove that the value of structures given by the Land Acquisition Officer is not correct. Baraskar was in Military Engineering Service for 7 years before working as Principal of a Polytechnic College. He is Government approved valuer and his evidence shows that he has experience of valuation of structures. He did valuation of the structures like well, band, cattle shed and *chulwan*. These structures were admittedly in existence in the lands acquired by the present appellant. His evidence and the report at Exhibit 29 shows that he ascertained the compensation on the basis of PWD rates which are DSR rates for the relevant period. The quantities are specifically mentioned in the report. As against this expert evidence, the State examined Arvind Kitted, Sectional Engineer of the Project. He produced some document at Exhibits 39 to 44 which are the valuation reports. He

valued one well for Rs.56,293/- and the second well for Rs.17,688/-. This was done in the year 1990. He did valuation of stone pouls, band, taal and also cattle shed. Some particulars are given with regard to quantities but they are not as specific as given by the expert examined by the respondent, owner. In view of these circumstances, the Reference Court believed the expert of the claimant. Not much enhancement is given in respect of these structures by the Reference Court on the basis of the report prepared by the expert examined by the owner of the land. Thus there is no reason to interfere in the decision given in respect of that compensation.

10) In the result, the appeal is partly allowed. The judgment and award of the Reference Court by which compensation was enhanced in respect of mango trees is hereby set aside. Similarly the award given by the Reference Court in respect of 107 sandal trees is also set aside. The other part of the decision of the Reference Court is confirmed. Award is to be prepared accordingly.

Sd/-
(T.V. NALAWADE, J.)

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