IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No. 160 of 2004

* The State of Maharashtra
Through the Collector, Jalgaon. .. **Appellant.**

Versus

* Subhash Kashinath Patil
Since deceased, through
legal representatives :

1) Mangalabai w/o Subhash Patil,
Age 55 years,
Occupation : Household,
R/o Amadade, Taluka Bhadgaon,
District Jalgaon.

2) Sandip Subhash Patil,
Age 35 years,
Occupation: agriculture
R/o As above.

3) Nityanand Subhash Patil,
Age 30 years,
Occupation : agriculture
R/o As above. .. **Respondents.**

Shri. R.B. Bagul, Assistant Government Pleader, for appellant.

Shri. Apparao P. Yenegure, Advocate holding for Shri. P.S. Patil, Advocate, for respondent Nos.1 to 3.

CORAM: T.V. NALAWADE, J.

DATE : 17th NOVEMBER 2015

JUDGMENT:

1) The appeal is filed against the judgment and award of Land Acquisition Reference No.360 of 1994 which was pending in the Court of the Civil Judge, Senior Division, Jalgaon. The reference filed under section 18 of the Land Acquisition Act 1894 for getting enhanced compensation by respondent is decided in his favour. Heard learned Assistant Government Pleader.

2) The land of the respondent admeasuring 43 R and 2 R pot-kharaba portion from Gat No.20 situated at village Amadade, Tahsil Bhadgaon, District Jalgaon is acquired for percolation tank. The notification under section 4 of the Land Acquisition Act was issued on 24-7-1986. For the area of 45R, the Land Acquisition Officer awarded compensation of Rs.6,431/- by presuming that it is jirayat land. Assessment of the compensation was made on the basis of land revenue and for the assessment purpose, the Land Acquisition Officer had prepared groups of the lands.

3) It is the case of the respondent, claimant that his land is Bagayat land. It is contended that the Land Acquisition Officer has committed error in assessing the compensation on the basis of land revenue when market value of the land was much higher. It is also contended that in the acquired portion there were K-lemon trees and the value of those trees is not given by the Land Acquisition Officer.

4) The respondent, State Government contested the matter by contending that the assessment was correctly made and it was a jirayat land.

5) Before the Reference Court the claimant examined himself and he examined witnesses like Namdeo Patil and Uttam Patil. In the evidence of Namdeo Patil one sale instance of 8-2-1985 is proved and it is in respect of some portion of land Gat No.173 of the same village. Uttam Patil is approved Government valuer and in his evidence it is proved that there were 80 K lemon trees in the acquired portion on 16-9-1986 and the approximate age of these trees was 6 years. They were fruit bearing trees.

6) The claimant relied on the revenue record which shows that right from the year 1981-82 his land was being used as Bagayat land and he had taken both, Kharip and Rabbi crops and there are two wells in this land. 7/12 extract also shows that in portion of 1 hectare there were 300 sweet lemon trees and in the portion of 1.20 hectare there were 400 K lemon trees. A certificate issued by the village Talathi to the effect that in the year 1992 also there were still such trees in the remaining portion is produced. Certificate about income from the agriculture is also produced.

7) The aforesaid sale instance is of jirayat land and it shows that portion of 14 R was sold for consideration of Rs.6000/-. The right to take water from the well was also sold along with portion. On the basis of revenue record, the Reference Court has observed that it was jirayat land as crops were not taken after rainy season. On the basis of this sale instance, the Reference Court first calculated the value for jirayat land. Then the Reference Court gave increase of 10% as the sale instance was old at least by one year on the date of issuance of

notification under section 4 of the Land Acquisition Act. The Reference Court deducted some amount as right to take water from the well was sold in the sale instance. Then the value of similar portion of Bagayat land was calculated by the Reference Court. The value of Bagayat land is held to be Rs.90,000/- per hectare.

8) The award prepared by the Land Acquisition Officer shows that only on the basis of revenue assessment grouping was done and it was presumed that the land in question was jirayat land and on the basis of revenue, the value was calculated. This method is not practical and correct method. Relevant law is discussed by the Reference Court. No evidence in rebuttal is given by the State Government. As against the aforesaid sale instance there is nothing with the respondent, Government. In view of this circumstance and the settled position of law it is not possible to interfere in the finding given by the Reference Court that it is Bagayat land and its market value was at least Rs.90,000/- per hectare.

9) The Reference Court has given compensation of Rs.96,000/- in respect of 80 K-lemon trees. There is mention of existence of such trees in the 7/12 extract and the first entry was of the year 1980-81. Two wells were also there in this land. In addition to that, there is income certificate and another certificate in respect of trees which were still there in the remaining portion in the year 1992. This record is a Government record and as there is nothing in rebuttal, this record also needs to be accepted as it is. The learned Assistant Government Pleader argued that the trees are shown in the southern side portion of the land and it was upto the claimant to show that this portion was acquired. The evidence given by the claimant, the valuer and the certificate issued by the Talathi are consistent with the case of the claimant and there is nothing in rebuttal.

10) The valuer has considered the market value of K-lemon at the relevant time per kilogram. The age of the trees is also considered and the life of the trees is considered and accordingly the value of each tree is calculated by the valuer. From this amount, some amount

is deducted by the reference Court by presuming that there cannot be any uniform income from all the 80 trees. The amount of more than Rs.200/- per tree is deducted by the Reference Court. When the Valuer had given the value of each tree as Rs.1488=99 paise the Reference Court has held that the value can be Rs.1200/- per tree. Government approved method was used by the valuer for assessing the value of the trees and there is nothing in rebuttal in respect of this part of evidence also.

11) The aforesaid circumstances and the record show that the Land Acquisition Officer had not taken into consideration other entries in the revenue record when he fixed the compensation for the land acquired. In respect of 2 R portion which is pot kharaba portion, also proper method is used by the Reference Court and Rs.900/- per R is given as compensation.

12) This Court sees no reason to interfere in the decision of the Reference Court. In the result, the appeal stands dismissed.

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

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