IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

First Appeal No. 1950 of 2014
With
Civil Application No.8433 of 2015

The Godavari Marathwada Irrigation
Development Corporation, Parbhani. .. **Appellant.**

Versus

Satish s/o Biharilal Baldawa
And Others. .. **Respondents.**

Shri. Hiraji T. Gaikwad, Advocate, for appellant.

Shri. A.P. Bhandari, Advocate, for respondent Nos.1 & 1A.

Ms. R.P. Gaur, Assistant Government Pleader for respondent Nos.2 and 3.

With

First Appeal No. 1951 of 2014
With
Civil Application No.8432 of 2015

The Godavari Marathwada Irrigation
Development Corporation, Parbhani. .. **Appellant.**

Versus

Shantabai w/o Satish Baldawa
And Others. .. **Respondents.**

Shri. Hiraji T. Gaikwad, Advocate, for appellant.

Shri. A.P. Bhandari, Advocate, for respondent No.1.

Ms. R.P. Gaur, Assistant Government Pleader for respondent Nos.2 and 3.

CORAM: T.V. NALAWADE, J.

DATE : 29th FEBRUARY 2016

ORDER:

1) The first proceeding is filed against the judgment and award of Land Acquisition Reference No.176 of 1995 (New No.214/1998) which was pending before the Civil Judge, Senior Division, Aurangabad and the second proceeding is filed against the judgment and award of Land Acquisition Reference No.175 of 1995 (New No.231/1998) which was pending before the same Court. The references were filed under section 18 of the Land Acquisition Act and the Reference Court has enhanced the compensation. Both the appeals are heard for final disposal at admission stage.

2) The lands of the original claimants are acquired for Jaikwadi Irrigation Project and they were situated at village Pimpalwadi Pirachi, Tahsil Paithan, District

Aurangabad. The notification under section 4 of the Land Acquisition Act was published in official gazette on 18-6-1992 and the Special Land Acquisition Officer prepared the award on 31-3-1995. The Special Land Acquisition Officer held that the lands acquired were bagayat land and gave rate of Rs.750/- per R. In the land of claimant Smt. Shantabai there were 270 sweet lime trees and the Special Land Acquisition officer gave rate of Rs.477/- per tree. There were small coconut trees which were treated as coconut seedlings and for each such tree, the Special Land Acquisition Officer gave rate of Rs.478/-. The claimant was not satisfied with the rate given in respect of the land and also in respect of the trees and so the reference was filed.

3) The land of claimants Satish and Sunil was also treated as Bagayat land and similar rate was given. In his land there were 17 fully grown coconut trees. There were 43 small coconut trees and there were 3 mango trees. Similar rate was given to small coconut trees by the Special Land Acquisition Officer in the present matter and total amount of Rs.4,910/- was given in respect of 17 fully

grown coconut trees which were fruit bearing. For three mango trees the total compensation of Rs.5,262/- was given.

4) It is the case of the owners that the lands are situated on Paithan-Aurangabad and Ahmednagar road and the road passes by the side of their lands. It is their contention that the lands are situated near Tahsil place Paithan, which is at a distance of hardly 10 kilometers and the MIDC area is adjacent to these lands. They had contended that the value of the land per acre was not less than Rs. two lakh. They contended that the value given in respect of the trees was also meagre. They had claimed the value on the basis of the valuation done by the private valuer.

5) Before the Reference Court both the claimants gave evidence. They examined private valuer, one Dr. Vishnu Patil and they proved one sale instance (Exhibit 42).

6) Exhibit 42 shows that land from village Pimpalwadi, the same village, situated in Zone V admeasuring 1 hectare 19 R was sold for the consideration of Rs.90,000/- on 26-12-1990. On one side of this land there was village shiv and on one side there was property of Nath Pulp Paper Mill. Thus the property was adjacent to industry and it was situated in Zone V. The document shows that in the ready reckoner the value of the land was shown as Rs.1,49,000/- and stamp duty was paid on this value. The learned Assistant Government Pleader submitted that the distance between the acquired land and the land from sale instance is not given. This circumstance is considered by the Reference Court. The transaction from the sale instance was of the year 1990 and the notification under section 4 of the Land Acquisition in the present matter was published on 18-6-1992. The Reference Court has not given 10% increase in the value of the sale instance. The Reference Court has considered the circumstances like the land from sale instance is situated adjacent to one Paper Mill and it is in Zone V and has held that there was some plus factor for the purchaser. That was dry land but the value of Rs.1512

per R was given by the purchaser. After deducting the plus factor like vicinity of the industrial area, the Reference Court has held that rate of Rs.1000/- per R needs to be given. The Reference Court has further held that both the lands were irrigated lands as there were aforesaid fruit bearing trees in the two lands. Thus rate for irrigated agricultural land is given by holding that perennial irrigation was required and it was available in view of the aforesaid circumstances. Thus the rate is increased only by Rs.250/- per R for both the claimants.

7) There is no dispute over the number of trees shown by the Special Land Acquisition Officer in his award and the number of trees mentioned in the claims by the owners. Nothing in rebuttal is given by the Government when the evidence of aforesaid nature is given by the claimants. The award prepared by the Special Land Acquisition Officer shows that some sale instances were considered by him but he had prepared groups of the lands on the basis of land revenue. There was at least one transaction showing higher price like Rs.1024/- per R in respect of Survey No.26/1. But this

transaction is not accepted as comparable sale instance by the Special Land Acquisition Officer. Some sale instances in respect of Survey No.27 were also available but they are discarded by presuming that they had non agricultural potentiality and in those cases the rate of more than Rs.1250/- per R was given.

8) The land of Satish and Sunil was from Gat No.32 and the land of Smt. Shantabai was from Gat No.41. In view of these circumstances and the vicinity of the acquired lands from the aforesaid sale instance lands, this Court holds that the approach of the Special Land Acquisition Officer was not correct. No evidence is given in rebuttal. In view of these circumstances, this Court holds that it is not possible to interfere in the decision given by the Reference Court that both the claimants are entitled to the rate of Rs.1,000/- per R.

9) It is already observed that there is no dispute about the number of trees in respect of which compensation is given by the Reference Court. In "E" Statement prepared by the Special Land Acquisition

Officer same number of trees are mentioned. Private Valuer Dr. Vishnu Patil has given evidence on the report prepared by him. He has given evidence that on 8-9-1992 he had visited these two lands and he had prepared the report on the basis of inspection of the trees. His evidence and the report show that relevant factors like vegetative growth, yielding capacity etc were considered by him. He had used the approved method like A.E. Miram's Real Property Table method for valuation. His evidence shows that he is M.Sc., Ph. D. and he had sufficient experience as he had worked as Horticulturist in Kokan Krishi Vidyapeeth, Dapoli, District Ratnagiri during years 1985-86 and 1989-91. From the year 1991 he had worked with agro based companies like Kalyani Agro Corporation Pvt. Ltd. etc. He had registered himself as Horticulture Consultant with Export Import Bank of India and he had published 12 research papers in national and intentional research journals. Copies of the certificates obtained by him are produced on the record. Though he obtained certificate from Institution of Valuers India in February 2007, the aforesaid educational qualifications and other certificates are sufficient to prove that he was experienced man and he could have ascertained the price of the trees. Panchanama was prepared in respect of trees and relevant factors like approximate age, distance between trees, height of the trees, thickness of the trunk and the spread of vegetation etc. was considered. The stage like initial stage of fruit bearing and full growth are considered by him. Much was argued in respect of the circumstance that the certificate of Aurangabad District Agricultural Produce Market Committee of the year 2012 is produced when the valuation was done in the year 1992. He has given evidence that duplicate certificate was obtained and he had considered the same value in his report. The value mentioned in the report by him is not inconsistent with the average market rate mentioned by him in the valuation report. The average market rate for one kilogram mango was considered as Rs.9.5. Average market price for coconut was considered as Rs.7.80 and average market price for sweet lemon per kilogram was considered as Rs.9.60 by him. He has produced one Government Resolution dated 27-12-1990 in which average yield is fixed by the Irrigation Department of the Government on the basis of age of the trees. Thus all the relevant factors were considered by him. One witness Sarjerao Dilwale is examined by the claimants to show that he was present when the aforesaid panchanama was prepared by the valuer.

10) When there is evidence of aforesaid nature given by the claimants, no evidence in rebuttal is given by the acquiring body. It is only mentioned that there were seedlings of coconut but the report of the expert from Horticulturist Department of the Government in that regard is not produced by the acquiring body. The reasoning for ascertaining the price of these trees is not there from the acquiring body. This Court has no hesitation to hold that giving of total price of Rs.4910/- for 17 fully grown coconut trees was on much lower side and similarly giving of Rs.7202/- for 7 mango trees was also on lower side. For 47 small coconut trees total of Rs.1935/- was given by the Special Land Acquisition Officer and for sweet lemon trees he had given the rate of Rs.477/- per tree. All these trees except mango require good irrigation facility and constant supply of water is necessary for coconut trees and sweet lemon trees. The private valuer

has given age of the trees and the stage whether it is fully grown fruit bearing tree or it is in initial stage of fruit bearing are described and there is panchanama in that regard. The valuer had fixed price at Rs.34,907/- per mango tree, Rs.6,470/- per coconut tree (fully grown). Rs.2,397/- per coconut tree (half grown or in initial stage of fruit bearing) and he had fixed rate of Rs.9,545/- per sweet lemon tree and they were fully grown fruit bearing trees. The Reference Court has given almost 50% of the price fixed by the private valuer which as follows. Rs.17,453/- per mango tree, Rs.3,235/- per coconut tree (fully grown), Rs.1,198/- per coconut tree (half grown) and Rs.4,772/- per sweet lemon tree. As there is nothing in rebuttal and the Reference Court has given reasoning for giving the aforesaid rates this Court holds that it is not possible to interfere in the decision given by the Reference Court in respect of value of the trees also.

11) In the result, both the appeals are dismissed. Civil Applications are disposed of. The amount if any deposited is to be disbursed as per the judgment of the Reference Court.

12) Learned counsel for the acquiring body submits that the acquiring body wants to challenge the order made by this Court today in Apex Court and for that they want some time. Other side has opposed to it. On the request of the learned counsel for the acquiring body time of five weeks is granted during which amount is not to be paid to original claimants.

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

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