

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 24 OF 2003

The State of Maharashtra
through the Spl. Land Acquisition Officer(II)
Uppar Tapi Project (Hatnur)
Jalgaon

Appellant

Versus

Sanjay Raghunath Chaudhari
age 33 years, occ.agril
r/o Pimpri Nandu, Tq. Muktainagar
Dist.Jalgaon

Respondent

Mr. A.M. Phule, AGP for the appellant.

CORAM : M.S. SONAK, J.

DATE : 5th JANUARY, 2018

JUDGMENT :

1. Learned AGP Mr. Phule appears for appellant. Respondent neither present nor represented though duly served.

2. Challenge in this appeal is to the judgment and award dated 21.03.2002 made by the reference Court enhancing compensation from Rs. 349/- per Are to Rs. 4,000/- per Are in respect of the acquired land and from Rs. 3,463/- per guava tree to Rs. 8,000/- per guava tree.

3. Learned AGP Mr. Phule submits that the two sale-instances relied upon by the reference Court were not comparable instances. He submits that the sale instances admittedly pertain to the lands

in the village of Anturli whereas the acquisition was from village Pimpri Nandu. He further submits that there is no evidence on record regarding comparability of the lands which were subject matter of the sale-instance and the acquired land. Learned AGP further submits that award of compensation at the rate of Rs. 8,000/-per guava tree is also excessive and the reasoning adopted by the reference Court for enhancement of compensation is not at all valid. For these reasons, learned AGP submits that the impugned award is liable to be set aside and the compensation awarded by the Land Acquisition Officer is liable to be restored.

4. In this case, it is true that the two sale-instances relied upon by the respondent-claimant pertain to the lands situate at village Anturli whereas the acquired lands are in the village Pimpri Nandu. However, there is ample evidence on record which establishes that the village Anturli is in the vicinity / neighbourhood of village Pimpri Nandu. Reference Court has taken note of this aspect and even observed in paragraph no. 8 of the impugned award that it was not even case of the appellant that sale-instances in the same village i.e. in the village of Pimpri Nandu were available and the claimant failed to produce the same. If the sale-instances from same village are not available, then there is no bar to take into consideration the sale-instances from the neighbouring villages provided, of course, evidence is led on the aspect of comparability.

5. About the aspect of comparability, there is ample evidence which has been considered by the reference Court. Reference Court, has infact, held and rightly so, that the lands forming

subject matter of two sale-instances were Jirayat lands whereas the acquired lands are Bagayat lands. There is no error in the reasoning of the reference Court that normally, the Bagayat lands would fetch twice amount as compared to Jirayat lands. As per the sale-instances the average rate comes to Rs. 2775/- per Are. Accordingly, as per the reasoning of the reference Court itself, the rate in respect of the acquired land should have been Rs. 5400/- per Are. However, the reference Court has determined compensation at the rate of Rs.4,000/- per Are. This, takes care of the slight difference if any, in the nature of the two lands in two neighbouring villages. There is accordingly, no reason to interfere with the impugned award determining compensation at the rate of Rs. 4,000/- per Are in respect of the acquired land.

6. There is evidence on record that the acquired land had about 230 guava trees. This is again a positive feature in respect of the acquired land. The claimant had deposed that he was getting an income of Rs. 2,00,000/- to Rs. 3,00,000/- per year from the fruit garden. Taking into consideration the number of trees and the fruits which they were bearing, it cannot be said that there is any error in enhancing compensation for fruit trees to Rs. 8,000/- per tree. Such enhancement is duly supported by evidence on record.

7. Accordingly, there is no reason to interfere with the impugned award. In case any amount is deposited in this Court, respondent-claimant is at liberty to withdraw the same together with accrued interest. If respondent has already withdrawn the compensation amount in the appeal by furnishing an undertaking, the undertaking stands discharged.

8. Appeal is therefore dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)

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