

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

First Appeal No. 676/2005

with

First Appeal No. 612/2006

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First Appeal No. 676/2005

Appellants/Ori. Respondent (On R.A.):-

1. The State of Maharashtra,
through the Collector, Nagpur.
2. The Special Land Acquisition
Officer, S.D.O. Katol.

VERSUS

Respondents/Ori Claimant (On R.A.):-

1. Mohandeo S/o Rathudeo Futariya,
Aged Adult, Occ. Agriculturist,
R/o. Isapur, Tal. Katol, Dist.Nagpur.
2. Vidarbha Irrigation Development
Corporation through its Executive
Engineer, Medium Project Division,
Nagpur. **(Amended as per order
dated 08.09.2008)**

Shri S. M. Ghodeswar, AGP for appellants.
Shri R. M. Bhangde, Advocate for respondents.

With

First Appeal No. 612/2006

Appellant (Original Claimant):- Mohandeo S/o Rathudeo Futariya,
Aged Adult, Occ. Agriculturist,
R/o. Isapur, Tal. Katol, Dist.
Nagpur. (On R.A.)

VERSUS

Respondents(Original Defendants):-

1. The State of Maharashtra through Collector, Nagpur.
2. The Special Land Acquisition Officer, S. D. O., Katol. (On R.A.)

Shri R. M. Bhangde, Advocate for appellant.
Shri S. M. Ghodeswar, AGP for respondents.

CORAM : MANISH PITALE, J.
DATE : 15.01.2018.

Oral Judgment :-

There are two appeals challenging the judgment and order dated 24.08.2005 passed by the 9th Ad-hoc Additional District Judge, Nagpur (hereinafter referred to as “Reference Court”) in Land Acquisition Case No. 274/2002. First Appeal No. 612/2006 has been filed by the claimant/land owner, being aggrieved by the amount of compensation granted by the Reference Court, claiming further enhancement, while First Appeal No. 676/2006 is filed by the State against the same order of the Reference Court being aggrieved by the enhancement granted to the claimant. There is no dispute between the parties that the question of enhancement is limited to the compensation granted for fruits bearing trees in the land in question. There is no contention raised in respect of the quantum of compensation granted for the land acquired in the instant cases.

2. The land in question in the present case is located in Survey No. 85/A, 85/B and Survey No. 106 at Mouza Isapur, Tahsil Katol, District Nagpur admeasuring 2.83 H.R. The Notification under Section 4 of the Land Acquisition Act, 1894 in the present case was issued on 29.03.1998 and the Notification under Section 6 of the said Act was issued on 19.11.1998. In pursuance of the conclusion of the land acquisition proceedings, on 26.12.2000, the Special Land Acquisition Office, Katol passed award granting total compensation for the land acquired and the fruit bearing trees at Rs. 15,97,144/-. Out of this, the amount towards compensation for the fruit bearing trees was Rs. 8,58,294/- and the balance amount was towards the land acquired.

3. Aggrieved by the amount of compensation granted by the Reference Court, the claimant preferred reference application under Section 18 of the said Act claiming enhancement of compensation at the rate of Rs. 20,000/- per tree for the fruit bearing trees. By the impugned judgment and order, the Reference Court partly allowed the Reference and granted enhanced compensation at the rate of Rs. 5,000/- per tree for total 526 orange and mosambi trees, Rs. 1500/- towards two lemon trees and Rs. 500/- each for three Ber trees. It is against the said judgment and order that these two appeals have been filed. The claimant contended that the increased compensation granted by the Reference Court was inadequate and the State contended that the enhanced compensation was not justified.

4. Mr. R. M. Bhangde, learned counsel for the appellant in First Appeal No. 612/2006, who is the respondent in First Appeal No. 676/2006, submitted that the Reference Court had taken into consideration the valuation reports placed on record on behalf of the claimant. One of the valuation reports was by an expert produced by the claimant himself, one Dadan Borkar, who was retired Associate Professor of Horticulture from the college of Agriculture, Nagpur and other report was a report relied upon by the Special Land Acquisition Officer in another acquisition case pertaining to Hingna area of the same district. The valuation report of the expert produced by the claimant was marked as Exhibit-17, wherein the expert had shown the value of orange and mosambi trees at Rs. 6211/- per tree. The other report which was relied upon in other acquisition proceedings of Hingna area of the same district which was marked as Exhibit-28, the valuation was given at Rs. 5825/- per tree, which was accepted by the Collector. The learned counsel on behalf of the claimant took me through relevant portions of the judgment of the Reference Court to show the reason given by the Reference Court in granting enhancement of compensation as regards fruit bearing trees. It was contended that since the findings of the Reference Court were based on cogent documentary and oral evidence on record, the enhanced compensation granted was justified. On a query as to what specific material was on record to justify the claim of further enhanced compensation @ Rs.

20,000/- per fruit bearing tree, the learned counsel for the claimant fairly stated that such material was not available on record.

5. On the other hand, Mr. S. M. Godeswar, learned Assistant Government Pleader appearing on behalf of Appellant – State in First Appeal No. 676/2006 and respondent in First Appeal No. 612/2006 stated that increased of compensation from Rs. 1800/- per tree to Rs. 5000/- per tree granted by the Reference Court was not justified. It was also submitted that the report at Exhibit-28 relied upon by the Reference Court pertained to a different area and that there was evidence on record to suggest that in the year 1998 when the Notification under Section 4 of the said Act was issued in the present case, in Katol area of the district, where the land was situated, the fruit bearing trees were afflicted by black fly disease (commonly known as “Kolsi”) which certainly had an effect on valuation of the fruit bearing trees. Learned Assistant Government Pleader submitted that enhancement of compensation granted by the Reference Court was not justified and the impugned judgment and order deserved to be set aside.

6. Having considered the contentions raised on behalf of respective parties and having perused the impugned judgment and order and the facts on record, the following points arise for determination in these appeals:

(i) Whether enhancement of compensation granted by the Reference Court in the impugned judgment and order is justified?

(ii) Whether the claimant is entitled for further enhancement as claimed by him?

7. In support of the claim of enhancement of compensation in respect of trees, the claimant has placed on record valuation report of the expert who also appeared as witness in support of the contention raised by the claimant. Perusal of the evidence on affidavit of the said expert witness at Exhibit-13 and the cross-examination of the said witness show that the expert had visited the land in question on 15.03.1998 which is very close to the date of issuance of the Notification under Section 4 of the said Act and that he had taken into consideration various aspects including the total productive life of the trees in question, as also the selling rate of the fruits. On this basis, the said witness had prepared his report recommending a valuation of Rs. 6,211/- per tree. There is nothing shown by the learned Assistant Government Pleader from the evidence available on record as to why the Reference Court could not have relied upon the evidence of the said expert witness.

8. Apart from this, it is brought on record that the Collector, Nagpur had accepted a report at Exhibit-28 granting valuation of trees at the rate of Rs. 5825/- per tree in the Hingna Area of the same

district. The Reference Court has referred to the said report at Exhibit-28 and it has also taken into consideration the fact that the orange trees grown in Katol tahsil i.e. the area where the land in question is located, have higher quality of yield and therefore, the valuation recommended by the expert in the instant case and the report at Exhibit-17 were justified. Therefore, it is clear that there was proper application of mind to the material placed on record and analysis of the evidence to arrive at logical findings by the Reference Court. There was nothing that the learned Assistant Government Pleader could demonstrate from the record as to why this Court requires to interfere in the findings given by the Reference Court.

9. Since, the learned counsel for the claimant has fairly conceded that there is no significant material on record to support his claim of further enhancement of compensation at Rs. 20,000/- per tree, the First Appeal No. 612/2006 deserves to be dismissed. I have also considered the grounds raised in First Appeal No. 676/2016 filed on behalf of the State challenging the findings of the Reference court. In this context, the learned Assistant Government Pleader referred to the ground that the expert who appeared in support of the claim was only an expert approved valuer for valuation of land and that he was not qualified to give evidence as regards the valuation of trees. The said contention raised on behalf of the learned Assistant Government Pleader deserves to be rejected. It is evident from the material on

record that the said expert witness was retired Associate professor of Horticulture, College of Agriculture, Nagpur and therefore, he was qualified to give evidence in respect of valuation of trees. Hence, I do not find any substance in the said submission raised on behalf of the State and First Appeal No. 676/2006 deserves to be dismissed. Accordingly, both the appeals are dismissed and the judgment and order passed by the Reference Court is confirmed.

No order as to costs.

JUDGE

Gohane