

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

First Appeal No.1273 of 2019

(Rangarao Sopan Bondade .vs. The State of Maharashtra and others)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders or directions
 and Registrar's orders

Court's or Judge's orders.

Mr. Sahil Nemade, Advocate for Appellant
 Ms. H.N. Jaipurkar, AGP for Respondent Nos. 1 & 2.
 Mr. R.C. Raibhandare, Advocate for Respondent No.3.

CORAM : Manish Pitale, J.

DATED : September 11, 2019.

By this appeal, the claimant (original owner) has challenged judgment and order dated 17.02.2016 passed by the Court of 2nd Joint Civil Judge, Senior Division, Yavatmal (Reference Court), whereby compensation stood enhanced to Rs.1,00,000/- per hectare for the land of the appellant which was acquired. In the present case, land admeasuring 2 hectares 84 R located in Gat No. 31/4-A at Waradh, taluka Ralegaon, district Yavatmal, was acquired for Waradh Minor Irrigation Project. The notification under Section 4 of the Land Acquisition Act, 1894 was issued on 01.05.1997 and the award was passed by the Land Acquisition Officer on 17.11.2000, granting compensation at the rate of Rs.19,000/- per hectare. On application preferred under Section 18 of the said Act, the Reference Court took up the question of enhancement of compensation raised by the appellant and by the impugned judgment and order held that the land was to be treated as dry crop land and just and fair compensation was Rs.1,00,000/- per hectare.

2. Mr. Sahil Nemade, learned counsel appearing for the appellant submitted that the enhanced compensation granted by the Reference Court was on the lower side and that it was based on an erroneous appreciation of the evidence and material on record. It was submitted that in cases arising from the same acquisition proceedings pertaining to the very same village Waradh, this Court had granted compensation at the rate of Rs.1,20,000/- per hectare. It was further submitted that since there was material on record in the present case to show that the acquired land was irrigated land, compensation at double the rate was required to be granted, meaning thereby that the appellant was entitled to compensation at the rate of Rs.2,40,000/- per hectare. In this regard, the learned counsel appearing for the appellant placed reliance on judgments passed by this Court in **First Appeal No. 1019 of 2009 (V.I.D.C. .vs. Vasant Ganpat Gopatwar and others)**, **First Appeal No. 1066 of 2016 (Ravindra Palasrao Bondade .vs. State of Maharashtra and others)**, **First Appeal No. 41 of 2008 (Gopichand Bhika Rathod.vs. State of Maharashtra and others)**, judgment of this Court in the case of **State of Maharashtra and another .vs. Baliram Girdhar Patil reported in 2006 (6) Mh.L.J. 72.**

3. On the other hand, Mr. R.C. Raibhandare, learned counsel appearing for the respondent no.3 (acquiring body), submitted that a proper reading of the

judgments of this Court relied upon by the appellant, demonstrated that while granting compensation at the rate of Rs.1,20,000/- per hectare, this Court had treated the acquired land to be irrigated land and that, therefore, there was no question of granting enhancement of compensation beyond the aforesaid rate fixed by this Court. On the aspect of whether the land in question in the present case could be said to be irrigated land, the learned counsel for the respondent no.3 invited attention of this Court to relevant portions of the impugned judgment and order passed by the Reference Court, to contend that the findings rendered therein pertaining to the land in question not being irrigated land, were correct and that in the present case, no error could be attributed to the Reference Court in granting compensation only at the rate of Rs.1,00,000/- per hectare. It was submitted that the appellant in the present case, in any case, was not justified in claiming compensation at Rs.1,20,000/- per hectare.

4. Ms. H.N. Jaipurkar, learned AGP submitted that as per law laid down by the Full Bench judgment of this Court in the case of **State of Maharashtra .vs. Prashram Jagannath Aute** reported in **2007 (5) Mh.L.J. 403**, no strait-jacket formula could be applied for granting compensation and that the indicators provided under Sections 23 and 24 of the said Act were to be taken into account for ascertaining just and fair compensation for the acquired land.

5. Heard learned counsel for the rival parties

and perused the material on record.

6. In the present case, there cannot be any doubt about the fact that the Reference Court treated the land in question as dry crop land. This is evident from the manner in which the material on record was appreciated and it was found by the Reference Court that the evidence and material produced on record on behalf of the appellant fell short of proving the fact that the land in question was irrigated land. In this situation, the Reference Court took into consideration sale deeds on record and by treating the land in question as dry crop land, it came to the conclusion that the compensation payable to the appellant was Rs.1,00,000/- per hectare.

7. A perusal of the material on record in the present case particularly Exh.31 (7/12 extract) and Exh.35 (map) show that crops were taken in *Rabi* as well as *Kharif* season in the land in question and that there was material to show that the appellant had taken permission from the Irrigation Department for lift irrigation. The map at Exh.35 shows that the land in question situated in Gat 31/4-A was located right next to a river, which was a perennial source of water. The question that the Reference Court was required to consider was, as to whether the aforesaid material placed on record at Exhs. 31 and 35 along with the permission for lift irrigation, could be said to be enough to conclude that the land in question could be treated as

irrigated land.

8. In this context, the reliance placed on behalf of the appellant on judgment of the Hon'ble Supreme Court in the case of **Chindha Fakira Patil .vs. Special Land Acquisition Officer** reported in **2012 (2) Mh.L.J. 530**, assumes significance. It was observed by the Hon'ble Supreme Court in the context of appreciation of 7/12 extracts as follows:-

"13. The High Court was also not right in upsetting the finding of the Reference Court on the issue of nature of land. In his deposition, Arjun Sukdeo Patil categorically stated that there were wells in the lands of the appellants and there were Jujubee, Tamarind, Mango, Pomergranate trees. This was supported by the entries contained in 7/12 extracts. The High Court discarded the evidence of the appellants by observing that they had not cultivated sugarcane and wheat. When it was not in dispute that there were wells in the acquired land, the mere fact that the appellants had not cultivated sugarcane or wheat cannot lead to an inference that the land was not irrigated and, in our view, there was no valid reason for the High Court to interfere with the finding recorded by the Reference Court that parts of the lands were Bagayat and for such land they were entitled to compensation @ Rs.6 lacs per hectare."

9. The said position of law was followed by this Court in the case of **Gopichand .vs. State of Maharashtra** (supra) and it was held that what was important was evidence and material on record to show

that the land in question could be perennially irrigated and that how much area of the land or to what extent the irrigation facility was provided would not make any difference while determining the amount of compensation to be awarded. The relevant portion of the said judgment reads as follows:-

“5. The existence of source of irrigation for the lands in question is the common and it is from the river bed. Merely because, the claimants in this appeal are not taking a crop of sugarcane would not mean that the land in question is not perennially irrigated. If there is a fluctuation in supply of water to the land from the river bed depending upon the gravity of rainy season in particular years and the availability of the water flow in the river would not make any difference. The land remains an irrigated land having perennially source of water from the river bed. How much area of the land or to what extent the irrigation facility is provided would not make any difference while determining the amount of compensation to be awarded. The land cannot be treated as drop crop land as has been held by the Reference Court. The distinction found is without any basis and it cannot therefore, be accepted.”

10. In the present case, a perusal of the impugned judgment and order passed by the Reference Court would show that in paragraph 9, the Reference Court rejected the claim of the appellant that the land in question was irrigated land on the ground, firstly that only because the appellant had shown permission from the Irrigation Department for lift irrigation it could not

lead to the conclusion that the land in question was irrigated land and secondly, that the 7/12 extract at Exh.31 showed only part of the land wherein facility of irrigation was utilized for cultivation and, therefore, it could not be said that the entire land was irrigated land. The said reasoning of the Reference Court is in the teeth of the position of law laid down by the Hon'ble Supreme Court and this Court in the above quoted judgments. Therefore, the said finding of the Reference Court deserves to be set aside and it is held that the land in question in the present case was irrigated land and assessment of the quantum of compensation was required to be done on the said basis.

11. It was contended by the learned counsel appearing for the appellant that since the land in question was irrigated land and this Court in judgments in the case of **VIDC .vs. Vasant** (supra) and **Ravindra .vs. State of Maharashtra** (supra) had granted compensation at the rate of Rs.1,20,000/- per hectare treating the land as dry crop land, double the amount of compensation i.e. Rs.2,40,000/- per hectare ought to be granted to the appellant herein. In the present case, the Reference Court granted compensation at Rs.1,00,000/- per hectare treating the land in question as dry crop land and if the aforesaid contention of the learned counsel for the appellant was to be accepted that for irrigated land double the compensation was to be given, the quantum would come to Rs.2,00,000/- per hectare.

12. In this context, it becomes necessary to ascertain whether this Court in the said judgments in the case of **VIDC .vs. Vasant** (supra) and **Ravindra .vs. State of Maharashtra** (supra) treated the land of the claimant as dry crop land. Since judgment in the case of **Ravindra .vs. State of Maharashtra** (supra) was simply based on the reasoning given in the case of **VIDC .vs. Vasant** (supra), perusal of the reasoning given in the **VIDC .vs. Vasant** (supra) becomes relevant. While concluding that the enhanced compensation to be granted to the claimant in that case was Rs. 1,20,000/- per hectare, this Court had held as follows:-

"8. As per Exhibit-26 which is a map indicating the location of the lands, it can be seen that Gat No.35 is adjoining the river bed and it is therefore urged on behalf of the claimant that the land be treated as irrigated land. The 7/12 Extracts on record do not indicate such nature of crops being taken so as to conclude that the said land was irrigated land. In fact, the claimant in his cross-examination has admitted that his land was of the same quality as the land in the sale transaction at Exhibit-24. At the same time, the observations of the Hon'ble Supreme Court in para 13 of the decision in Chindha Fakira Patil and others (supra) cannot be brushed aside. The fact that the acquired land was situated near the river bed is by itself a relevant factor which cannot be ignored.

Thus, considering the totality of the evidence on record including the fact that the sale instance at Exhibit-24 makes a reference to the agreement dated 4-12-1993 coupled with the fact

that he acquired land was located besides the river bed, the claimant is entitled for some enhancement for the acquisition of the acquired land by applying the same in the agreement dated 4-4-1993 which has culminated into the agreement dated 15-12-1995. The amount of Rs.1,20,000/- per hectare is found to be reasonable and just compensation for the acquired land. The point as framed is accordingly answered."

13. A proper reading of the said reasoning would show that although this Court had proceeded on the basis that the 7/12 extract in the said case did not indicate that the land in question was irrigated land, at the same time, the quantum of compensation was not simply based on treating the land as dry crop land but the location of the land being next to the river bed, was a factor taken into consideration and thereupon compensation at Rs.1,20,000/- per hectare was granted. Thus, the learned counsel for the appellant is not justified in claiming that the appellant in the present case was entitled to twice the said amount i.e. Rs.2,40,000/- per hectare by treating the land in the present case as irrigated land.

14. In the present case, as noted above, the distinguishing factors i.e. the 7/12 extract at Exh.31, the map at Exh.35 and the permission from the Irrigation Department for lift irrigation, demonstrated availability of perennial source of irrigation and, therefore, it was required to be treated as irrigated land. If the compensation was to be treated as

Rs.1,00,000/- per hectare since the Reference Court treated the land as dry crop land, twice the amount would only come to Rs.2,00,000/- per hectare. On the question as to whether such a formula could be applied, reliance placed by the learned counsel appearing for the appellant on the case of **State of Maharashtra .vs. Baliram Girdhar Patil** (supra) is relevant, wherein it was held that if there was absence of other material on record, it could be safely concluded that irrigated land ought to be granted compensation at twice the rate of dry crop land. In the case of **Chindha Fakira Patil .vs. Special Land Acquisition Officer** (supra), even the Hon'ble Supreme Court granted approval to compensation granted for Bagayat land at the rate twice the compensation granted for Jirayat land. The learned AGP was justified in referring to Full Bench judgment of this Court in the case of **State of Maharashtra .vs. Prashram Jagannath Aute** (supra), to contend that no strait-jacket formula regarding double compensation could be applied. But a perusal of the said judgment would show that it was emphasized by this Court that the evidence and material in each case was required to be taken into consideration, in the light of Sections 23 and 24 of the aforesaid Act, read with the classic principles laid down by the Hon'ble Supreme Court in the case of **Chimanlal Hargovinddas .vs. Special Land Acquisition Officer** reported in **(1988) 3 S.C.C. 751**.

15. In the present case, considering the fact that the appellant had placed on record cogent material in

the form of 7/12 extract at Exh.31 and map at Exh.35 and permission from the Irrigation Department for lift irrigation, there was sufficient material to support the claim of the appellant that if for dry crop land compensation was to be granted at the rate of Rs.1,00,000/- per hectare, for irrigated land at least double the quantum of compensation was required to be granted.

16. Taking into consideration the aforesaid material on record, this Court finds that the Reference Court committed an error in treating the land in question as dry crop land while determining the quantum of compensation payable. Since this Court has found that the land in question ought to be treated as irrigated land, the quantum of compensation payable to the appellant was Rs.2,00,000/- per hectare.

17. Accordingly, the present appeal is partly allowed and it is held that the appellant is entitled to compensation at Rs.2,00,000/- per hectare for the acquired land. The appellant shall be entitled to all the statutory benefits payable on such enhanced compensation except that the appellant shall not be entitled to interest on the enhanced amount for the period of delay of 597 days in filing the appeal, as per the order dated 21.06.2019 passed by this Court while condoning the delay. The respondents shall deposit the enhanced amount of compensation along with all benefits as noted above, in this Court within a period of six months from today. Upon such deposit of amount,

the appellant shall be entitled to withdraw the same immediately.

JUDGE

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