IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 275 OF 2020

Shaikh Noor S/o Shaikh Shabu,
Age : Major, Occup: Agriculture,
R/o : Panwadi, Taluka Phulambri,
District Aurangabad. … APPELLANT
(Original Claimant)

VERSUS

1. The State of Maharashtra,
Through Special Land Acquisition Officer,
Aurangabad.

2. The Executive Engineer,
Minor Irrigation, (Local Sector),
Near Hegdewar Hospital,
Aurangabad. ...RESPONDENTS
(Original Respondents)

…

Mr. D. A. Bide h/f. Mr. V. B. Wayal, Advocate for Appellant.
Mr. P. M. Kulkarni, AGP for Respondents No.1 and 2.

…

CORAM : K.K. SONAWANE, J.

DATED : 28th FEBRUARY, 2020.

JUDGMENT :

1. ***Admit***. The matter is taken up for finality on merit with consent of both sides.

2. The instant appeal put in question quantum of compensation amount determined by the learned Reference Court in LAR No. 425 of 2010 filed by the appellant - original claimant under Section 18 of the Land Acquisition Act, 1894 (for short "Act of 1894").

3. The factual aspect of the matter in nutshell is that, the agricultural land Gut No. 197 admeasuring 1H.61 R located at village Panwadi, Ta. Phulambri, District Aurangabad belonging to appellant-original claimant was put under acquisition for construction of percolation tank No. 6 of village Panwadi. The notification under Section 4(1) of the Act of 1894 was published on 13-01-2006 in the official Gazette. After due compliance of procedural formalities the Special Land Acquisition Officer ("SLAO") proceeded to make award as contemplated under Section 11 of Act of 1894. The appellant-claimant did not accept the price determined by the Special Land Acquisition Officer ("SLAO") for his acquired land as well as valuation of fruit bearing trees located in the field. Therefore, he accepted the compensation amount offered by the SLAO under protest and filed the Reference Petition, taking recourse of provisions of Section 18 of Act of 1894, for enhancement of compensation amount. The learned Reference Court dealt with the Reference Petition filed on behalf of appellant-claimant for determination of just and reasonable market value of the land and fruit bearing trees under acquisition. Thereafter, on appreciation of entire oral and documentary evidence adduced on record, the learned Reference Court proceeded to partly allowed the Reference Petition and agreed to enhance the market price of acquired lands from Rs.965/- per R calculated by SLAO to market price @ Rs.2605/- per R. The learned Reference Court also pleased to allow the enhancement of compensation for fruit bearing trees of appellant-claimant. The Reference Court placed reliance on the report of claimant's Valuer. However, the learned Reference Court did not allow

the entire amount of compensation calculated by the claimant's valuer Dr. V. K. Patil, but allowed to enhance the valuation of fruit bearing trees @ 40% of report of claimant's valuer.

4. Being aggrieved with the mode and manner of learned Reference Court, for determination of market value of the acquired land as well as deduction of 60% in the valuation of the fruit bearing trees assessed by Valuer Dr. Patil, the appellant-claimant rushed to this Court and preferred the present appeal under Section 54 of the Act of 1894 for redressal.

5. Learned counsel for the appellant vehemently submits that the impugned Judgment and Award passed by the Reference Court is erroneous, illegal and not within the ambit of provisions of law. The learned Reference Court did not appreciate the oral and documentary evidence on record in its proper perspective. The learned Reference Court overlooked the circumstances that the acquired land of the appellant - claimant was rich and fertile land having irrigation facility from the well located in the acquired land. The learned Reference Court erroneously classified the acquired land as seasonal irrigated land instead of (Bagayat) Perennially irrigated land for calculation of market price. The learned Reference Court ought to have determined the market price of the acquired land as Perennially irrigated land. The learned counsel for appellant harped on the circumstances that the learned Reference Court relied upon the valuation report produced and proved by claimant's valuer Dr. Patil. But, without any reasonable cause, the learned Reference Court proceeded to determine the value

of fruit bearing trees @ 40% of the report of claimant's valuer. The procedure adopted by the learned Reference Court for assessment of the valuation of land as well as fruit bearing trees @ 40% of the value determined by Valuer Dr. Patil, is erroneous, illegal and without any reasonable cause. Learned counsel for appellant fervidly submits that respondent-State has acquired the land and fruit bearing trees for the public purpose of construction of percolation tank in the village. The SLAO as well as learned Reference Court granted the meager compensation amount for his land and fruit bearing trees. The learned Reference Court ought to have considered the land of the claimant as Bagayat land for payment of compensation. The learned Reference Court also committed error in deducting 60% amount of valuation of trees calculated by claimant's valuer. Learned counsel requested to grant just and reasonable compensation to the claimant for his Perennially irrigated land and fruit bearing tress as per valuation made by horticulturist Dr. Patil. The learned counsel relied upon the legal guidelines delineated by Honourable Apex Court in the case of ***Chindha Fakira Patil (D) through L.Rs. Versus Special Land Acquisition Officer,*** reported in ***2011(6) Bom.C.R.735 (Supreme Court)***.

6. The learned AGP for respondents raised the objections and submits that the learned Reference Court has appreciated the circumstances on record in proper manner and reasonably allowed the enhancement of compensation in favour of appellant-claimant. There was no error in the findings of learned Reference Court. There is no need to cause interference in it.

7. Having given anxious consideration to the arguments canvassed on behalf of both sides in the light of oral and documentary evidence adduced on record it reveals that there are two basic issues which required to be dealt with in this appeal. Firstly, whether the appellant-claimant proves that the acquired land was essential to be classified as (*Bagayat)* Perennially land for calculation of market price. Secondly, whether the appellant-claimant succeeded to establish that the approach of learned Reference Court for deduction of 60% of the total valuation assessed by the claimant's valuer would be legal, appropriate and within purview of law to ascertain the just and reasonable cost of fruit bearing trees.

8. The appellant-claimant adduced his evidence by filing affidavit in the form of examination-in-chief (Exhibit-11) on record. He deposed that his land bearing Gut No. 198 was Bagayat, Perennially irrigated having ample source of water from the well located in the land. He produced document of 7/12 extract (Exhibit-22) on record to show existence of well in the acquired land. It is not put into controversy that the SLAO also awarded compensation of Rs.18090/- to the appellant-claimant for his constructed well under acquisition after its due valuation from Government Valuer. The learned Reference Court has taken into consideration the entries in the cultivation column of 7/12 extract during the relevant period and noticed that the appellant-claimant had sown the crops like Bajra, Jawar, Cotton and groundnuts upto year 1993 in the acquired land. The learned Reference Court also came across with plantation of fruit bearing trees like Guava, Mango and Custard Apple etc. in the acquired land. Learned Reference Court

classified the land under acquisition of appellant-claimant as seasonally irrigated land for the purpose of calculation of its market value. In paragraph No. 13 the learned Reference Court has observed as follows :-

> *"13. The respondents without adducing oral as well as documentary evidence have subjected the applicant to the cross-examination. In the course of cross examination suggestion was given that in the acquired land there was no well. The applicant has flatly denied the suggestion. There is presumption under Section 157 of the Maharashtra Land Revenue Code, 1966 about the revenue entries, Suggestion itself will not be sufficient to rebut that presumption. If, the nature of the crops raised by the applicant is taken into consideration having special regard to the existence of well one would conclude that the acquired land was seasonal irrigated land and not perennial irrigated land as claimed by the applicant and as submitted by the learned advocate for the applicant. It thus comes out that acquired land of the applicant was seasonal irrigated land."*

9. The learned counsel for appellant criticized the findings of the learned Reference Court and submits that classification of the acquired land as seasonally irrigated land on the basis of yield taken from it is totally erroneous, illegal and based on misconception of factual aspects. The learned counsel relied upon the exposition of factual aspects by the Honourable Apex Court in the case of ***Chindha Fakira Patil (deceased) through L.Rs. Versus Special land Acquisition Officer,*** reported in ***2011 (6) Bom. C. R. 735.*** The Honourable Apex Court in paragraph No. 13 elucidated that :-

> *"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, Tambrine, Mango, Pomegranate 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."*

10. In the matter in hand, it is an admitted fact that there was well in existence in the acquired land and as per report of Government Valuer of SLAO, its cost was calculated at Rs.18,090/-. The SLAO also paid compensation of Rs.18,090/- for the well under acquisition to the appellant-claimant. Therefore, the absence of entries of sugarcane, wheat, etc. in the cultivation column of 7/12 extract would not itself sufficient to draw inference that the acquired land was not perennially irrigated land. The learned Reference Court had received an opportunity to consider the aforesaid observations of Honourable Apex Court in the ***Chindha Fakira Patil's*** case ***(supra).*** But, it appears that learned Reference Court misconstrued the exposition of factual matter referred by the Hounourable Apex Court. The learned Reference Court unwittingly overlooked the evidence of claimant adduced on record in regard to existence of constructed well in the acquired land having ample source of water. There were fruit bearing trees like Mango, Guava, Custard apple etc. in the acquired land. The document of 7/12 extract buttress the contentions propounded on behalf of claimant about existence of well in the acquired field. But, the learned Reference Court has fallaciously drawn inference that as there were no entries in 7/12 extract of crops like sugarcane, wheat, etc.,the nature of acquired land would be seasonally irrigated land. In view of evidence of claimant adduced on record, in the light of guidelines delineated by the Apex Court in the ***Chindha Fakira Patil's*** case (***supra),*** there is no impediment

to conclude that learned Reference Court ought to have classified the acquired land as Perennially Irrigated land for the purpose to determine just, reasonable and proper market value of it prevailing over in the area during relevant period.

11. Learned Reference Court considered the comparable sale instances (Exhibits-18 and 19) produced on record. The sale instance (Exhibit-18) was of land admeasuring 60 R for consideration of Rs.2,30,000/- and it was executed on 09-05-2005. The sale instance (Exhibit-19) came to be executed on 08-07-2005 for land admeasuring 54 R and consideration amount was shown as Rs.2,11,000/-. The lands under sale in both the sale-instances were of Perennially irrigated lands. The learned Reference Court appreciated both the sale instances and arrived at the conclusion that market value for Perennially irrigated lands would be @ Rs.3907/- (i.e. Rs.3900/-) per R. The learned Reference Court proceeded to calculate 2/3rd times of the price of Rs.3900/- being market price for the acquired land of appellant-claimant. The classification of acquired land of appellant was held to be seasonally irrigated land. As mentioned above, the land under acquisition of appellant-claimant is required to be classified as Bagayat i.e. Perennially irrigated land. It has an ample source of water from the well and it was supported by relevant entry in 7/12 extract. Moreover, there was no any arduous cross-examination to the appellant-claimant on the issue of his claim to get the market price for his acquired land on a par with the market value of Bagayat/Perennially irrigated land. The respondents did not adduce any evidence to traverse the contentions propounded on behalf of appellant-claimant.

Therefore, there is no impediment to arrive at the conclusion that the market price of the land of appellant-claimant was to be calculated being an land of Bagayat (Perennial) irrigated category. The market rate already fixed by learned Reference Court @ Rs.3900/- for Bagayat (Perennial) land on the basis of comparable sale instances (Exhibits-18 and 19), as referred supra, appears to be just and reasonable market rate prevailing in the area for acquired land. In the result, the appellant-claimant is entitled to receive compensation for his acquired land Gut No.198 admeasuring 1H-61R @ Rs.3900/- per R., which would be accrued to Rs.6,27,900/-. After deducting the amount of compensation of Rs.1,55,368/- for land @ Rs.965/- per R. and Rs.18,090/- for well paid by the SLAO, the appellant-claimant is further entitled to receive balance amount of compensation for his acquired land to the tune of Rs.4,54,442/- (i.e. Rs.6,27,900 - Rs. 1,55,368 - Rs. 18,090 = Rs. 4,54,442).

12. Now, turning to another spectrum of the matter in regard to valuation of fruit bearing trees under acquisition, it appears that the factum of acquisition of various types of trees and its numbers are not put into controversy. The SLAO has considered the age, physical condition and productivity of the fruit bearing trees, etc. and pursuant to the valuation report prepared by Government personnel awarded compensation in favour of the appellant-claimant. But, the learned Reference Court, after considering the evidence on record, drawn the inference that the value of fruit bearing trees of the appellant-claimant calculated by the SLAO is inappropriate and imperfect one. The learned Reference Court, pursuant to valuation report produced and

proved by claimant's Valuer CW-2 Dr. Patil on record, allowed the enhancement of compensation for the fruit bearing trees under acquisition. But, the learned Reference Court proceeded to calculate the valuation of fruit bearing trees @ 40% of the valuation made by claimant's Valuer Dr. Patil. The appellant-claimant strongly raised objection to the mode and manner in which the Reference Court proceeded for deduction of 60% of the amount of valuation calculated by claimant's Valuer Dr. Patil. Learned Reference Court, in paragraph No.22 of the impugned Judgment, described as under :-

> *"22. The valuer by adopting income capitalization method has drawn the value of the acquired land. As observed hereinabove, as the price of the acquired land is being determined by adopting sale instance method the applicant will not be entitled to the entire amount of compensation determined by the valuer by adopting capitalization method. It appears that all the trees were at the full fruit bearing stage. If, of the value of the valuer only 40% amount is given as compensation for the trees then coupled with market value of the land that will be the value of the acquired land. .. .."*

13. At this juncture, the minute scrutiny of the aforesaid findings expressed by learned Reference Court reflects that the mode of deduction of 60% amount of valuation of trees assessed by claimant's Valuer found rests on figment imagination. The learned Reference Court did not enunciate the reasons for assessment of valuation of trees after deduction of 60 % of the amount of value calculated by the claimant's valuer. There were no any other relevant documents or valuation report prepared by Officers from Government Horticultural Department produced on record to traverse the valuation of trees assessed by the claimant's Valuer. At this juncture, taking recourse of legal preposition laid down in the case of ***Chimanlal Hargovinddas***

Versus Special Land Acquisition Officer, reported in ***AIR 1988 Supreme Court 1652***, the valuation report of Dr. Patil is only available on record for appreciation being document produced and proved to determine valuation of trees in this case. Accordingly, the learned Reference Court relied upon the valuation report prepared by claimant's valuer Dr. Patil, but adopted the exercise of deduction of 60% amount from the total valuation of the trees calculated by claimant's valuer Dr. Patil. It is worth to mention that the learned Reference Court did not unfurl the reasons for random deduction of 60% valuation, which would obviously cause injustice and prejudice to the claimant. However, resorting to particular method adopted by the Honourable Apex Court, in the aforesaid ***Chinda Fakira Patil's*** case, for calculation of valuation of fruit bearing trees on the basis of claimant's valuer, this Court also proceeded to determine the valuation of fruit bearing trees of appellant-claimant @ 80% of valuation made by Dr. Patil. The details of valuation of fruit bearing trees in tabular form is shown as below :-

Sr. No.	Acquired Fruit Bearing Trees			Market Rate of Fruit Bearing Trees			Compensation Payable to the Claimants for Fruit Bearing Trees [80% of Valuation (Exhibit-27)]
	Gat No.	Type of Trees	Number of Trees	Value Fixed by Valuer Dr.Patil (Exhibit-27)	Awarded by Reference Court [40 % of Valuation (Exhibit-27)]	Enhanced by This Court [40 % of the Valuation (Exhibit-27)]	
1	2	3	4	5	6	7	8
1	198	Mango	3	126835	50734	50734	101468
2		Mango	20	916455	366582	366582	733164
3		Ber	12	65618	26247	26247.4	52494.4
4		Ber	8	40490	16196	16196	32392
5		Sitafal	15	42830	17132	17132	34264
6		Chinch	5	278968	111587	111587.4	223174.4
Total				1471196	588478	588478.8	1176956.8

14. In view of aforesaid discussion, there is no impediment to arrive at the conclusion that appellant is entitled to receive compensation amount @ Rs.3900/- per R for his acquired Bagayat Land. The claimant-appellant has already received the compensation fixed by SLAO i.e. @ Rs.965/- per R in total Rs.1,55,368/- towards land and Rs.18,090/- for the well acquired in this case. After deduction of compensation amount paid to the claimant by SLAO @ Rs.965/- per R i.e. Rs.1,55,368 for his acquired land and Rs.18,090/- paid towards compensation of well by the SLAO, the appellant is entitled to receive compensation of Rs.4,54,442/- for his acquired land and fruit bearing trees in Gut No.198 admeasuring 1 Hectare, 61R located at village Panwadi, District Aurangabad. The details of valuation for acquired land and fruit bearing trees in tabular form is shown as follows :-

Market Rate for the Acquired Land					
Land	Area	Fixed by SLAO	Awarded by Reference Court	Enhanced by this Court	Payable to the Appellant-Claimant
1	2	3	4	5	6=(4+5)
G.No. 198	161 R	155368/-	419405/-	208495/-	6,27,900/-
	(1H-61R)	(Rs.965/- per R)	(Rs.2605/- per R)	(Rs.1295/- per R)	(2605+1295) (=3900 per R)
	Well	18090/-			

Less the Amount paid by the SLAO, the total amount payable to the claimant as under :-

Compensation	Land	Well	Fruit Bearing Trees	Total
Enhanced by this Court	627900	0	1176956	1804856
Paid by SLAO	155368	18090	119402	292860
Payable to claimant	454442	0	1057554	1511996

(Total amount payable Rs. 4,54,442/- + Rs.10,57,554 = Rs.15,11,996/-)

15. In the above premise, the appellant-claimant is entitled to receive compensation of Rs.15,11,996/- (Rs. Fifteen Lakhs Eleven Thousand Nine Hundred Ninety Six Only) [Rs.4,54,442/- and Rs.10,57,554/- towards acquired land and fruit bearing trees respectively in Gat No.198 located at village Panwadi, Taluka Phulambri, District Aurangabad]. In addition, the appellant-claimant is entitled to receive statutory benefits under Sections 23(1-A) and 23(2) as well as interest as contemplated under Sections 28 and 34 of the Act of 1894 on the enhanced compensation for the period as allowed by the learned Reference Court, in the impugned Judgment and Award passed in proceeding of LAR No. 425 of 2010.

16. The present First Appeal stands partly allowed and disposed of in above terms.

Sd/-

[K. K. SONAWANE]
JUDGE

MTK
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