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

FIRST APPEAL NO.731/2014

Sau.Ratnaprabhabai w/o Madhukar Bhagat,
Aged about 70 years, Occupation : Cultivator,
R/o. Harsul, Tahsil Digras, Dist. Yavatmal.
... **APPELLANT**

--Versus ---

1. State of Maharashtra, through
Collector, Yavatmal.

2. Collector,
Yavatmal, Dist. Yavatmal.

3. The Special Land Acquisition Officer,
Upper Painganga Project,
Pusad, District Yavatmal.

4. Executive Engineer,
Arunavati Project, Digras,
District Yavatmal. .... **RESPONDENTS**

Shri V.N.Patre, Advocate for appellant.
Shri A.S.Fulzele, Additional Government Pleader for respondent nos. 1 to 3.
Shri M.A.Kadu, Advocate for respondent no.4.

CORAM : A.S.CHANDURKAR AND N.B.SURYAWANSHI, JJ.
DATED : 08.12.2020

JUDGMENT (Per A.S.Chandurkar, J.)

This appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short, 'the said Act') takes exception to the judgment of the Reference Court in Land Acquisition Case (LAC) No.944/2004 decided on 19.10.2013. By the said judgment, the Reference Court partly enhanced the amount of compensation from that which was granted by the Land Acquisition Officer. The claimant not being satisfied with the same has preferred the present appeal.

2. Land admeasuirng 2 Hectares 54 R from Gat No. 185 situated at village Harsul, Taluka Digras, District Yavatmal was the subject matter of acquisition for submergence of Arunavati Project. Notification under Section 4 of the said Act was published on 18.01.1996 and the Land Acquisition Officer passed his award on 23.04.1997. He awarded compensation at the rate of Rs.93,281/- per hectare for the acquired land. Compensation was also granted for 468 sweet lime, 394 orange and 99 other fruit trees. In the reference proceedings preferred under Section 18 of the said Act, the claimant examined her husband and an expert valuer. The acquiring body did not examine any witnesses. The Reference Court enhanced the amount of compensation for the acquired land at the rate of Rs.1,50,000/- per hectare. It further enhanced the amount of compensation that was awarded for the fruit trees. It is in the aforesaid backdrop the present appeal has been filed.

3. Shri V.N.Patre, learned counsel for the appellant in support of his prayer for enhancement in the amount of compensation submitted that before the Reference Court a sale instance dated 10.09.1991 from village Chincholi (Exh.54) was relied upon. Land admeasuring 0.85 R was sold for Rs.80,000/- and the rate per hectare therefore was Rs.1,00,000/-. According to him, as the sale deed was of the year 1991 by granting an increase @10% per annum for every year, the claimant would be entitled to an amount of Rs.3,00,000/- per hectare for the acquired land. Though the Reference Court took into consideration this sale instance, it committed an error by deducting 50% amount

from Rs.3,00,000/-. There was no legal justification for making such deduction and on that count the claimant was awarded lessor compensation. He further submitted that the acquired land was near the State highway and had good potential. 7/12 extracts at Exhibits 49 and 50 indicated that the land was irrigated land and considering the nature of fruit trees in the said land, the amount of compensation was liable to be enhanced. He further submitted that the valuer as examined had visited the acquired land and had prepared the valuation report. The said report at Exhibit 57 was not liable to be discarded and the reasons given by the Reference Court in that regard were not correct. By leading cogent evidence, the claimant had discharged the burden and was therefore entitled for higher compensation. In support of his submissions, the learned counsel placed reliance on the decisions in ***Mahesh Dattatray Thirthkar Vs. State of Maharashtra, AIR 2009 SC 2238*** and ***Chindha Fakira Patil (D) through LRs Vs. The Special Land Acquisition Officer, Jalgaon AIR 2012 SC 481***. It was thus submitted that the claimant be awarded further amount of compensation.

4. Shri M. A. Kadu, learned counsel for the respondent no.4 opposed the aforesaid submissions and supported the judgment of the Reference Court. According to him, no sale instance from village Harsul where the acquired land was situated was brought on record. There was nothing on record to indicate the distance between the acquired land and village Chincholi from where the land at Exhibit 54 was sold. The Reference Court

rightly deducted 50% from Rs.3,00,000/- while enhancing the compensation for the land. He then submitted that valuation report at Exhibit 57 prepared by the valuer was rightly discarded by the Reference Court. The evidence of the valuer did not inspire confidence as the material on the basis of which the said report was prepared was not produced before the Court. By referring to the decision in ***Executive Engineer, Minor Irrigation Works, Jalgaon Vs. Vitthal Damodar Patil and Another, (2019) 7 SCC 225*** it was submitted that the valuation report was not liable to be accepted mechanically. It was then submitted that as compensation for the land was awarded, the claimant was not entitled for separate compensation for the trees. In that regard he referred to the decision in ***Ambya Kalya Mhatra (D) by LRs and others Vs. State of Maharashtra AIR 2011 SC (Supp) 625*** and submitted that no interference was called for with the impugned judgment.

5. In the light of aforesaid contentions, the following point arises for determination :

Whether the claimant is entitled for further enhancement in the amount of compensation as awarded by the Reference Court ?

6. We have heard the learned counsel for the parties and we have also gone through records of the case. Before the Reference Court, the claimant examined her husband - Madhukar at Exhibit 46. He referred to sale deed dated 10.09.1991 in respect of Gat No.23 from village Chincholi. The said sale deed

was at Exhibit 54. That sale deed indicates that dry land admeasuring 0.85 R was sold for Rs.80,000/-. He further deposed that the acquired land was touching Nanded-Nagpur State highway from its eastern side and it was also seven kilometers from Digras city. He further deposed that there were various full grown fruit trees on the land. He was cross-examined by the acquiring body and he denied the suggestions as made to him. The claimant also examined a valuer Narayan Dhoke at Exhibit 56 who deposed that he had prepared a valuation report for the fruit trees by visiting the field on 25.04.1996. According to him, the value of the trees was determined on the basis of the age of the trees. In his cross-examination, he denied the suggestion that the report was prepared without visiting the acquired land. He admitted that the yield of fruit trees was less in Yavatmal district and also the fact that particulars with regard to the height and circumference of the trees were not mentioned in his report. The accounts of income from the fruit trees was also not made available and he had not brought the material on the basis of which his report was prepared before the Court.

7. After considering the aforesaid evidence, the Reference Court enhanced the amount of compensation by taking into consideration the sale instance at Exhibit 54. It is seen that while determining the amount of compensation in the light of the fact that the acquired land was perennially irrigated land due to presence of a well therein as well as the nature of crops grown, increase of 10% per year was granted. On that basis the market value of

acquired land was approximately determined at Rs.3,00,000/- per hectare in the year 1996 when the Notification under Section 4 of the said Act came to be issued. While the basis of applying the guess work is reasonable in view of the fact that increase of 10% per year has been granted, it is found that deduction to the extent of 50% is on a higher side and the same is not justified. It is true that the exact distance between the acquired land at village Harsul and the sale instance from village Chincholi was not on record but the Reference Court has observed that both the villages were in the same tahsil. By applying some guess work we find that instead of approximate value of Rs.3,00,000/- per hectare for the acquired land in the year 1996, the enhancement that can be granted to the claimant could be at Rs.2,75,000/- per hectare in view of the fact that the sale instance pertains to an adjoining village. The claimant is thus held entitled for enhancement in the amount of compensation for the land from Rs.1,50,000/- per hectare to Rs.2,75,000/- per hectare.

8. While considering the prayer for grant of enhancement in the amount of compensation as awarded for the fruit trees, it would be necessary to first consider the contention raised on behalf of the respondents that no separate compensation for the fruit trees was liable to be granted by the Reference Court. The said submission is based on the decision of the Hon'ble Supreme Court in ***Ambya Kalya Mhatra*** (supra). However perusal of the said judgment and especially paragraph 22 thereof indicates that if the land value has been determined with reference to the sale instances of other lands then the trees will

have to be valued separately. It is only if the value of the land is determined on the basis of compensation awarded for an orchard then there would be no question of again adding the value of the trees. In the present case, as compensation for the land has been determined by relying upon the sale instance at Exhibit 54 the submission that no separate compensation for the fruit trees deserves to be granted cannot be accepted.

It is however found that there is no sufficient evidence on record led by the claimant before the Reference Court on the basis of which there can be further enhancement in the amount of compensation than what has been granted by the Reference Court. On the contrary, the evidence of the valuer at Exhibit 56 indicates that the valuer did not make necessary enquiries about rates at which fruits were being sold in the market. Nor did the report contain various material details with regard to the trees standing on the acquired land. It is on that basis that the Reference Court was required to determine the compensation for the fruit bearing trees on the basis of the average yield of such trees by referring to the Circular dated 27.10.1990 issued by the State Government. The reasons given for not accepting the valuation as indicated in the valuation report at Exhibit 57 are also correct especially in the light of the observations in ***Executive Engineer*** (supra). However in the absence of any cross-examination by the respondents challenging the adjudication by the Reference Court, it would not be permissible to reduce the amount of compensation from that which was granted by the Reference Court. We are therefore inclined to maintain the amount of compensation as granted by the Reference Court for the fruit trees and the prayer for further enhancement in that regard cannot be accepted.

9. Accordingly the point framed is answered by holding that the claimant would be entitled to further enhancement in the amount of compensation only with regard to the acquired land and no further enhanced compensation is liable to be granted for the fruit bearing trees.

10. In the result, the following order is passed :

(i) The judgment of the Reference Court in LAC No.944/2004 dated 19/10/2013 is partly modified. The claimant is held entitled to receive compensation for the acquired land @ Rs.2,75,000/- per hectare. The compensation granted for the fruit bearing trees by the Reference Court is maintained.

(ii) Enhanced compensation is payable along with all statutory benefits in accordance with the provisions of the said Act and the same be paid within a period of twelve weeks from today.

(iii) First Appeal is partly allowed in aforesaid terms leaving the parties to bear their own costs.

JUDGE **JUDGE**

Andurkar..