

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

FIRST APPEAL NO.140 OF 2012
WITH
FIRST APPEAL NO.909 OF 2012

FIRST APPEAL NO.140 OF 2012

Naresh Samirmal Kotecha,
 Aged Major, Occupation-Agriculturist,
 R/o. Pahur, Tq. Babhulgaon,
 District-Yavatmal.

... Appellant
 (orig.claimant On RA)

.. Versus ..

1. State of Maharashtra, through
Collector, Yavatmal.
2. Special Land Acquisition Officer,
Bembla Project, VIDC, Awadhut Wadi,
Yavatmal.
3. The Executive Engineer,
Bembla Project, VIDC, Awadhut Wadi,
Yavatmal.

... Respondents
 (orig. resps. On RA)

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Shri Anand Joshi, Advocate for appellant,
 Shri A.S. Fulzele, Addl.GP for respondent nos.1 and 2,
 Shri M.A. Kadu, Advocate for respondent no.3.

.....

FIRST APPEAL NO.909 OF 2012

Vidarbha Irrigation Development
Corporation, through its Executive
Engineer, Bembala Project Division,
Yavatmal. ...

Appellant

.. Versus ..

1. Naresh Samirmal Kotecha,
Aged about adult,
Occupation-Agriculturist,
R/o. Pahur, Tq. Babhulgaon,
District-Yavatmal.

2. The State of Maharashtra,
The Collector, Yavatmal,
Tq. and District-Yavatmal.

3. The Special Land Acquisition Officer,
Bembala Project, Tq. and
District-Yavatmal. ...

Respondents

.....

Shri J.B. Kasat, Advocate for appellant,
Shri Anand Joshi, Advocate for respondent no.1,
Shri M.A. Kadu, AGP for respondent nos.2 and 3.

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

RESERVED ON : 03.12.2020
PRONOUNCED ON : 22.12.2020

JUDGMENT [PER : N.B. SURYAWANSHI, J.]

1. Both these appeals are filed under Section 54 of the Land Acquisition Act, 1894 (for short 'the said Act') challenging the judgment of the reference Court dated 09.02.2011 in Land Acquisition Case No.606/2005, they are being decided together by this common judgment.

2. Land Gat No.148 ad-measuring 6 H 5 R situated at village Barad, Tq. Babhulgaon, and District-Yavatmal was acquired for the purpose of the Bembla River Project. Notification u/s 4 of the said Act is dated 24.7.2003. The Land Acquisition Officer granted compensation for land at the rate of Rs.25,445/- per hectare, Rs.4,19,500/- was awarded for 500 awala trees, Rs.1,77,000/- for 500 custard apple trees and Rs.6,98,600/- for 1400 ber trees. The claimant filed reference u/s 18 of the Land Acquisition Act for enhancement of compensation. The reference Court enhanced compensation for fruit-bearing trees thereby awarding Rs.3,070/- per awala tree, Rs.3,160/- per ber tree and Rs.2,000/- per custard apple tree. The reference Court, however, rejected the claim for agricultural land ad-measuring 6 H 5 R. This judgment is under

challenge in both these appeals.

3. In First Appeal No.140/2012 filed by the claimant, Shri Anand Joshi, the learned advocate claimed that the rejection of claim for compensation towards the land is erroneous on the part of the reference Court. It is further argued that the sale instances which were brought on record vide Exhs.23 and 24, were not properly considered by the reference Court. The claim of Rs.5 Lacs per hectare ought to have been awarded by the reference Court taking into consideration the sale instances placed on record by the claimant. The learned advocate, therefore, claimed that the reference filed u/s 18 of the said Act ought to have been allowed by the reference Court by awarding value of land at the rate of Rs.13,35,000/-. The reference Court has further erred in not awarding value of the fruit-bearing trees as per the valuation report, therefore, claims that the additional compensation of Rs.2,03,00,000/- needs to be given towards the fruit-bearing trees. For well and pipe line, the claimant is entitled for an amount of Rs.1,50,000/-. In support of the claim, the claimant has placed sufficient material on record before the reference Court, hence the appeal of the claimant deserves to be allowed.

In support of his submissions, the learned advocate relied

upon *Pramilabai wd/o Manguji Ade and others .vs. State of Maharashtra and another, reported in 2018 (3) Mh.L.J. 787* and the judgment of learned Single Judge at Nagpur in *First Appeal No. 469 of 2012 (Sau. Ushabai Manikrao Baradkar ..Vrs.. State of Maharashtra and other)*.

4. In First Appeal No.909/2012 filed by acquiring body, Shri J.B. Kasat, learned advocate, submitted that the claimant has failed to bring on record evidence in support of enhancement and failed to discharge the burden cast upon them. The reference Court has enhanced compensation on the basis of guess work and the enhancement is erroneous and perverse. The enhancement of compensation on the part of the reference Court is not justified as the same is not supported by the evidence on record. Therefore, the judgment of the reference Court is liable to be quashed and set aside by allowing the appeal and confirming the award passed by the Land Acquisition Officer.

5. Shri M.A. Kadu, learned advocate appearing for concerned respondents in both the appeals, submitted that the claimant is not entitled for separate compensation for land and trees as the reference Court has enhanced compensation by applying

capitalization method. The claimant has failed to bring on record the rates of APMC which he received by selling of fruits. He further submitted that the reference court has wrongly considered the age of fruit trees as 6 years, when the material on record clearly shows that the age of fruit trees as 13 years. Because of the wrong consideration of age of trees by the reference Court, the entire calculation of valuation of fruit trees is wrong. It is, therefore, submitted that the reference Court has granted compensation at higher rate on the basis of wrong calculation. The claimant has not filed rates of APMC. The reference Court has granted exorbitant enhancement for fruit trees to which the claimant is not entitled too. In support of his argument, Shri Kadu, learned advocate placed reliance on the judgment of the Hon'ble Apex Court in ***Executive Engineer, Minor Irrigation Works .vs. Vitthal Damodar Patil and another, 2019 (7) SCC 225.***

6. Heard the learned advocates for the parties and the learned A.G.P., perused the record. Following point arises for our consideration :

Whether the judgment of the reference court is liable to be modified by enhancing/reducing the amount of compensation awarded.?

7. For answering the point for determination, it is necessary to consider the evidence of parties, both oral and documentary.

8. The claimant Naresh Samirmal Kotecha examined himself in support of his claim and has relied upon the sale instances/deeds at Exhs.23 and 24, joint measurement report at Exh.25, 7/12 extract at Exhs.26 and 27 and electric bill at Exh.28. The claimant also examined valuer Subhash Ramrao Tayde as PW-2, who proved valuer report Exh.32. The claimant in his evidence though supported his claim, in his cross-examination, he has admitted that he cannot tell the name of firm from which he had purchased plants of ber, awala and custard apple. He could not tell the exact income from all the trees. He could not tell the name of purchaser to whom he had sold the fruits. He admitted that same quantity of fruits cannot come on every year. The market rates of fruits are depend on season. Sometime season may be high. He did not have document of fruits in the year 2003. He could not tell how much fees he paid to the valuer Mr. Tayde (PW-2). He further admitted that at the time of filing reference he did not file the report of valuer. He could not give any reason for the same. He did not have any document showing the expenditure for plantation of trees. He did not possess any

document about construction of well and pipe line. He also did not made valuation of the same.

9. Shri Subhash Tayde (PW-2) was examined as valuer. He proved valuation report Exh.32, wherein he has valued ber trees at the rate of Rs.7594/- per tree, awala trees at the rate of Rs.6911/- per tree and Sitafal trees at the rate of Rs.7772/- per tree. He admitted in the cross-examination that he did not obtain photographs of standing trees for ascertaining the condition of trees. He did not obtain receipts from the land owner to show the variety of fruits. For 2-3 times, he visited the land of claimant, but he did not mention the dates of his visit. He did not have any document to show the rates of fruits in 2003. He stated that he arrived at the value of each tree on the basis of yield and his cost. Approximately he had drawn the yield of trees. He admitted that he did not collect any document in respect of sale of fruits by the claimant, even he did not enquire about the selling of fruits by the claimant. He admitted that he did not bring any circular and/or book for showing the actual rate of fruits. He further admitted that every year due to change in atmosphere, same quantity of yield is not there. Further admission is that due to change of climate, fruits will come in less quantity. If infected by disease, some fruits may not bear trees and some fruits may be

destroyed. He admitted that he did not give notice to the acquiring body of his visits and he had taken inspection behind the back of the respondents.

10. Though the claimant claims more number of trees in his acquired land i.e. 700 awala trees, 1400 ber trees and 700 custard apple trees, the material on record shows that though in the year 1995-96, first joint measurement was carried out. At that time, those number of trees i.e. 700 awala, 1400 ber and 700 custard apple trees were recorded in the acquired land. However, thereafter again in the year 2003, another measurement was carried out and at this time, 500 awala trees, 1400 ber trees and 500 custard apple trees were found in acquired land, so also in the valuation report Exh.32, PW-2 Tayde has shown 1400 ber trees, 500 awala trees and 500 custard apple trees. Therefore, the contention of the claimant is in respect of more number of trees are unacceptable and the number of trees mentioned in Exh.32 can be relied upon and the claimant is entitled for the compensation in respect of 500 awala trees, 1400 ber trees and 500 custard apple trees.

11. The valuation report prepared by government valuer Exh.25 is on record. However, no material is on record to show as to

on what basis the government valuer has made valuation of trees. The 7/12 extract of the year 1995-96 shows that the claimant has planted the trees in his acquired land. In the first joint measurement report, the measurement officer has shown the age of ber trees as 6 years, awala trees as 7 years and custard apple trees as 5 years. In that view, at the time of Section 4 Notification on 24.7.2003, the age of ber, awala and custard apple trees would be 13 years approximately.

12. The reference Court placed reliance on Circular dated 27.12.1990 (for short, 'the said Circular') issued by the Horticulture Department of the Government, which according to the reference Court was the most reliable document for valuation of the average yield of fruits. Though the claimant brought on record the documents about rates of APMC, they were not relied upon by the reference Court because they were not proved on record by adducing evidence. The reference Court, after going through the said Circular and the valuation reports at Exhibits-25 and 32 as well as the evidence of claimant and his valuer, came to the conclusion that some guess work is necessary in the matter. The reference Court, therefore, by taking the average yield in terms of the said Circular and applying Miram's table, calculated the cost of fruit trees as follows :-

Type of fruits	Yield taken into consideration	Market calculated as rate per miraj	Cost maintenance of i.e. 10%	Total cost of fruits
Awla	35 kgms	Rs.35 x 8.610 = 301/- per quintal	(-) 10% Rs.30	Rs.305+Rs.20 fuel
Ber	40 kg.	Rs.40 x 8.610 = 344/- per quintal	(-) 10% Rs.30	Rs.314+Rs.20 fuel
Custard Apple	25 kgm	Rs.25 x 8.404 = 210/-	(-) 10% Rs.20	Rs.190+Rs.10 fuel

13. Multiplier of 10 was then applied to the cost of fruits in terms of the ratio in **Assistant Commissioner-cum-LAO Bellary ..Vrs.. S.T. Pompanna Setty, 2005(5) All M.R. (SC) 293**, wherein it is held, "from the above cases, it is clear that normally in the cases where compensation is awarded on yield basis, multiplier of 10 is considered proper and appropriate....." Therefore, by applying multiplier of 10 and after adding fuel value, the reference Court has granted compensation as follows :-

- i) Awala tree Rs.305 x 10 = Rs.3050 + Rs.20 = Rs.3070/-
- ii) Ber tree Rs.314 x 10 = Rs.3140 + Rs.20 = Rs.3160/-
- iii) Custard Apple tree. Rs.190 x 10 = Rs.1900 + Rs.10 = Rs.2000/-

There appears a mistake in calculating the market rate of awala as per the miram's table. The value of Rs.301/- per quintal is arrived as per miram's table, 10% needs to be deducted from the same. Thus, the total cost of fruits would come to Rs.271/- per

quintal, however, the reference Court has wrongly calculated the said cost at Rs.305/- in the above table. Therefore, the rate of compensation for awala tree will have to be calculated at Rs.271 x 10 = 2710 per awala tree.

14. Due absence of any evidence brought on record by the claimant, his claim towards compensation of Rs.1,50,000/- for well and pipeline was rightly rejected by the reference Court.

15. The claimant has relied upon the judgment in *Pramilabai* (supra) the facts of the said case were different. The acquired land in that case was an irrigated land and the compensation was granted for the land on the basis of sale instances. The land was located near the highway. This Court by taking into consideration the evidence of private valuer PW-2, which was found to be proper and came to the conclusion that the reference Court was justified in granting compensation for land of fruit bearing trees separately. This in our opinion would not help the case of claimant.

Reliance is also placed on unreported decision of the Single Bench at Nagpur in First Appeal No.469 of 2012, which is also in respect of land from village Barad. However, in that case this Court found the evidence of valuer proper and accepted his report in

respect of valuation of fruit trees and granted compensation as per valuers report. In the case in hand, in view of the admissions given by the valuer in cross-examination, his report cannot be relied upon as it is. Hence, this decision would not help the case of the claimant.

16. In *Executive Engineer Minor Irrigation Works* (supra), the Hon'ble Supreme Court was held that "in determining the market value, every reference proceeded must be decided on the evidence produced and issues raised therein". In that case, evidence of Horticulture expert was not found to be analyzed properly, the issues regarding valuer competency, capability and procedure followed by him in preparing valuation report was raised and proof for justifying his valuation report was not provided. It was, therefore, held that these aspects ought to have been considered by the High Court as First Appellate Court both on law and facts and the High Court erred in accepting the report of Horticulture expert by placing reliance in **Chindha Fakira Patil ..Vrs.. LAO, 2011(10) SCC 787.**

In the case in hand, we have not accepted the report of either Government valuer or the reference Court has not relied upon either the report of Government valuer or provide valuer. Since we have appreciated the evidence placed on record, we are deciding the present first appeal on the basis of material and evidence produced

before the reference Court.

17. In **Ambya Kalya Mhatre .vs. State of Maharashtra, 2012**

(1) Mh.L.J. 9, it is held that “Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition either for the land or for the trees separately does not arise”. Since in the case in hand, the compensation for fruit trees is granted by the reference Court by capitalizing the income with reference to the yield, the claimant is not entitled for separate compensation for his land and the same is rightly refused by the reference Court.

18. The reference Court has recorded findings while granting enhancement of compensation for the fruit trees on proper analysis of evidence on record. On the basis of material on record, the reference Court was justified in granting enhanced compensation. The claimant has not been able to point out any other material to support his claim for further enhanced compensation. Similarly no material was pointed out by the other side, in support of his claim that exorbitant compensation awarded, which needs to be reduced and the LAO's award needs to be upheld. We find that the compensation granted by the reference Court for fruit bearing trees does not deserve any interference. The claimant as well as the

acquiring body have not made out any case for interfering in the judgment of the reference Court. After going through the material placed on record and impugned judgment, we are of the considered view that the reference Court has given proper reasoning and has arrived at correct calculation while granting enhanced compensation towards fruit trees. The reference Court has rightly denied separate compensation for land. We, therefore, answer the point accordingly. We do not find merit in the appeal filed by the claimant. Appeal filed by the acquiring body needs to be partly allowed to the extent of modification in the compensation awarded for awala trees. Hence, the following order :

ORDER

1. The First Appeal No.140/2012 is dismissed.
2. The First Appeal No.909/2012 is partly allowed by modifying the judgment of the reference Court to the extent that the compensation for Awala trees be calculated at the rate of Rs.2710/- per tree. Therefore, for 500 awala trees, the total compensation payable to the claimant would be Rs.13,55,000/-.
3. In case the claimant has withdrawn the entire amount of compensation, an amount of Rs.1,85,000/- towards difference of compensation for Awala trees should be refunded to the acquiring body, within a period of three months from today, failing which

interest @ 6% per annum shall be payable on the said amount till realization.

4. A decree be drawn up accordingly.
5. Parties to bear their own costs.

(N.B. Suryawanshi, J.)

(A.S. Chandurkar, J.)