

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

FIRST APPEAL No. 1142/2013

Amar S/o Deepak Bhandarwar,
Aged about 33 years Occ. Agriculturist,
R/o Ramnagar Ward, Hinganghat, Tah.
Hinganghat, District Wardha, Through
power of Attorney Deepak M. Bhandarwar.

APPELLANT

.....VERSUS.....

1. The State of Maharashtra,
through Collector, Wardha.
2. Sub-Divisional Officer and Special
Land Acquisition Officer,
Hinganghat, District Wardha.
3. Executive Engineer, Lower Wena
Project, District Wardha.

RESPONDENTS

Shri R.D. Shinde, counsel for the appellant.
Shri M.A. Kadu, Assistant Government Pleader for the respondent nos.1 and 2.
Ms A.A. Athalye, counsel for the R-3.

CORAM : A.S. CHANDURKAR AND N.B. SURYAWANSHI, JJ.
DATE : 22ND DECEMBER, 2020

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

This appeal under Section 54 of the Land Acquisition Act, 1894 takes exception to the judgment of the reference Court dated 07.04.2012 in L.A.C. No.56 of 2004. Land from Field Survey No.178/2 to the extent of 0.85 R came to be acquired for resettlement of project affected persons. The said field was admeasuring 3 Hectare 50 R and part thereof came to be acquired. Notification under Section 4 of the said

Act was issued on 16.07.1998 and the award was passed by the Land Acquisition Officer on 24.09.2001. As per the said award amount of Rs.62,000/- per Hectare was awarded for the land and an amount of Rs.8,81,137/- was granted for the trees. The claimant not being satisfied with the said amount of compensation filed reference proceedings under Section 18 of the said Act. By the impugned judgment, the reference Court has awarded a sum of Rs.2,00,000/- per Hectare for the acquired land. No enhancement was granted for the fruit bearing trees. Being aggrieved, the claimant has filed the present appeal.

2. Shri R.D. Shinde, learned counsel for the appellant submitted that the acquired land had great potential and hence the claimant had claimed an amount of Rs.7,50,000/- per Hectare for the same. The sale instances at Exhibits at 36 and 38 had been taken into consideration but the enhancement granted on that basis was on a lower side. The 7/12 extracts indicated that the acquired land was irrigated and therefore the amount of compensation for the land was liable to be suitably enhanced. He thus submitted that the reference Court erred in not granting any enhancement for the fruit bearing trees. By examining expert horticulturist below Exhibit 28 there was sufficient evidence indicating that the fruit bearing trees ought to have been awarded higher compensation. The report of the horticulturist was not considered in the

proper perspective resulting in grant of lower compensation. According to the learned counsel, the 7/12 extract at Exhibit 24 clearly indicated the number of trees standing in the acquired land. The reference Court took into consideration lesser amount of trees in that regard. Placing reliance on the decisions in *Mahesh Dattatraya Thirthkar Versus State of Maharashtra [(2009) 11 SCC 141]* as well as *Chinda Fakira Patil (D) through L.Rs Versus The Special Land Acquisition Officer Jalgaon [2012(2) Mh.L.J. 530]*, the learned counsel for the appellant submitted that a case was made out for enhancing the amount of compensation for the acquired land as well as the fruit bearing trees.

3. Ms A.A. Athalye, learned counsel for the acquiring body-respondent no.3 besides supporting the impugned judgment submitted that the compensation granted for the land as well as for the fruit bearing trees was on a higher side. There was no basis on record to grant an amount of Rs.2,00,000/- per Hectare for the acquired land. Similarly, as per the E-Statement annexed to the award it was clear that there were only 37 Awla trees and 6 Mango trees in 0.85 R land that was acquired. The number of trees for which compensation was claimed was on a higher side and the claimant had sought to indicate the entire trees that were standing in Field Survey No.178/2 admeasuring 3 Hectare 50 R. As only a portion on that survey number was acquired, the number trees as

indicated in E-Statement could be taken into consideration. The report of the expert was rightly discarded by the reference Court and she referred to the evidence of the horticulturist in that regard. Reliance was placed on the decision in *Special Land Acquisition Officer and Another Versus Sidappa Omannu Tumari and Others* [(1995 Supp (2) SCC 168)] and it was submitted that the amount of compensation was liable to be reduced.

Shri M.A. Kadu, learned Assistant Government Pleader for the respondent nos.1 and 2 adopted the said arguments.

4. In the light of the rival submissions, following point arises for determination:-

Whether the judgment of the reference Court is liable to be interfered with?

5. We have heard the learned counsel for the parties at length and with their assistance we have gone through the records of the case. At the outset, it may be noted that the acquired body had filed First Appeal No.445 of 2014 but the same was dismissed for want of prosecution on 07.07.2017. The said appeal has not been restored thereafter. As a result it is only the appeal preferred by the claimant that requires adjudication. Since the appeal filed by the acquiring body has not been restored, it would not be permissible in these facts to consider the submissions of the learned counsel for the acquiring body that the

amount of compensation as granted by the reference Court should be further reduced in the appeal of the claimant especially in the absence of any cross-objections.

6. Insofar as compensation for the acquired land is concerned, the reference Court has referred to the sale instances at Exhibits 36 and 38 which relate to Dalpatpur. It is stated that the land therein was valued at Rs.1,20,000/- per Hectare and that land was dry crop land. The land instances were of the year 1997. The reference Court by taking into consideration the fruits grown on Survey No.178 has treated the acquired land as irrigated. The market price has been taken at Rs.1,00,000/- for dry crop land and the compensation has been awarded at the rate of Rs.2,00,000/- per Hectare for irrigated land. In absence of any further material to enhance the amount of compensation, it is found that the adjudication by the reference Court is reasonable not warranting any further increase in the amount of compensation. Hence, the compensation awarded for the land by the reference Court is maintained.

7. Insofar as the fruit bearing trees are concerned, the appellant in his claim petition has claimed compensation for 300 Awla trees, 455 Pomegranate trees and 2400 Papaya trees. The 7/12 extract at Exhibit 24 gives different figures of fruit bearing trees and that record is maintained with regard to entire Field Survey No.178/2. As stated

above, Field Survey No.178/2 admeasured 3 Hectare 50 R while land admeasuring 0.85 only has been acquired. The E-Statement that is part of the award mentions 37 Awla trees and 6 Mango trees standing in the acquired land which is a portion of Field Survey No.178/2. Considering the size of the entire land the figures of fruit bearing trees mentioned in the E-Statement would have to be accepted especially when there is no other contrary evidence.

8. Perusal of the deposition of the horticulturist at Exhibit 28 indicates that the said witness has admitted that he did not mention boundaries of the field that was inspected while preparing the report. The rates of the fruit bearing trees were not obtained from the market. Similarly, the notes taken by him while preparing the report were also not produced before the Court during his deposition. The reference Court therefore has not found it proper to place entire reliance on his deposition. It has been observed in paragraph 29 of the impugned judgment that the compensation awarded by the Land Acquisition Officer for the fruit bearing trees was reasonably higher than the valuation shown by the horticulturist. We therefore find that even for the fruit bearing trees the reference Court has granted reasonable and appropriate compensation not warranting any further enhancement. Though the learned counsel for the appellant relied upon the decision in *Mahesh*

Dattatraya Thirthkar (supra) we are satisfied that reasonable and fair compensation has been awarded to the appellant for the acquired land as well as the fruit bearing trees. There is no other evidence on record on the basis of which further enhancement in the amount of compensation can be granted to the appellant. The point as framed is accordingly answered by holding that the judgment of the reference Court does not call for any interference.

9. Accordingly, for the reasons aforestated the judgment of the reference Court is confirmed. First Appeal No.1142 of 2013 thus stands dismissed leaving the parties to bear their own costs.

(N.B. SURYAWANSHI, J.)

(A.S. CHANDURKAR, J.)

APTE

**Rohit
Apte**

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