

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

FIRST APPEAL NO. 1834 OF 2019

Samast Gaokari, Dabhrul
Through : Govardhan Kisan Chavan,
age 62 years occupation agriculture/labour
R/o Dabhrul Taluka Paithan Dist. Aurangabad ...Appellant

VERSUS

Rama S/o Genu Chavan,
age 78 years occupation agriculture
R/o Dabhrul Taluka Paithan Dist. Aurangabad ...Respondent

*Mr. K.B. Jadhav, Adv., with Mr. S.P. Khanderao, Adv. for appellant.
Mr. Jivan J. Patil, Advocate for the respondent.*

CORAM : N.J. JAMADAR, J.

Reserved for order on : **1st March 2021**

Pronounced on: **24th Mach 2021**

J U D G M E N T :

The legality, propriety and correctness of the judgment and order passed by the learned 5th Joint Civil Judge (Senior Division), Aurangabad, in Land Acquisition Reference No. 96/2017 dated 2nd May 2019, whereby respondent Rama Genu Chavan was declared to be entitled to receive entire amount of compensation of Rs. 30,21,744/-, alongwith the interest accrued thereon, is assailed

in this appeal by the appellant-claimants.

2. Shorn of superfluities, the background facts leading to this appeal can be stated as under:

The Special Land Acquisition Officer, Krishna Khore Vikas Mahamandal, Aurangabad, initiated the process to acquire the land for widening of National Highway No. 211. An award came to be passed on 3rd of June 2017. Under the said award, compensation of Rs. 30,21,744/- was determined for the acquired land admeasuring 400 square meters out of Gat No. 222 (suit land) situated at *Mouje* Dabhrul Dist. Aurangabad. In the record of rights, the suit land stood in the name of Rambhau Genu Chavan, the respondent.

b) When the notice for disbursement of the compensation was issued, the claimants, who identified themselves as villagers of Dabhrul (*Samasta Gaokari*, Dabhrul) lodged objection with the competent authority. It was contended that the suit land was transferred by respondent Rambhau for construction of a public temple. The villagers thereafter constructed the temple of Lord Maruti. The local Member of the Legislative Assembly provided funds from his Constituency Development Fund for erection of a Meeting Hall (*Sabha Mandap*). Respondent Rambhau, by taking undue advantage of the fact that in the record of rights his name

was shown as the holder of the suit and, has laid claim over the amount of compensation for the acquired land. In fact, the respondent had no subsisting title and interest in the suit land. Thus, the compensation be paid to the body of villagers.

c) As the dispute arose, the competent authority referred the dispute as to the entitlement to compensation and apportionment thereof to the Civil Court under Section 3H of the National Highways Act, 1956.

d) The Reference Court considered the objection of the claimants, reply of the respondent thereto and, after evaluation of the evidence led by the claimants-appellant and the respondent, was persuaded to answer the reference in favour of the respondent to the effect that the later was legally entitled to receive the entire amount of compensation alongwith interest accrued thereon being the owner of the acquired land.

3. Being aggrieved by and dissatisfied with the impugned judgment and order, the claimants are in appeal.

4. Having regard to the nature of the controversy, with the consent of the Counsels for the parties, the appeal was taken up for final disposal.

5. I have heard Shri K.B. Jadhav, the learned Counsel for the appellant and Shri J.J. Patil, the learned Counsel for the respondent, at some length. With the assistance of the Counsels for the parties, I have perused the pleadings and evidence on record.

6. It was urged on behalf of the appellants that the Reference Court took a very hyper technical view of the matter. Without disputing that the name of the respondent was shown in the record of rights as the holder of the suit land, it was submitted that the fact remains that a temple was constructed on the suit land. The mere fact that there was no instrument to evidence the transfer of the suit land by the respondent for the purpose of construction of the temple of Lord Maruti or the respondent subsequently objected to registration of the trust over the suit land, according to the learned Counsel for the appellant, could not have been given such weight as to non-suit the appellants-claimants. The fact that in the communication addressed to the competent authority dated 23rd of January 2017 (Exh. 31) the respondent had categorically admitted that there was a public temple in the suit land and, in the event the entire compensation was paid to the respondent, he would construct a temple in his balance land, ought to have been considered by the

Reference Court in the proper perspective, urged the learned Counsel for the appellant.

7. Per contra, the learned Counsel for the respondent questioned the locus of the appellant. Elaborating the submissions, it was urged that the objection was lodged by a group of villagers identifying themselves as '*Samasta Gaokari, Dabhru'*'. It was not lodged by a juridical entity, like trust. Thus, the objection could not have been entertained. Secondly, according to the learned Counsel for the respondent, the fact that the respondent had acquired the suit land under the sale deed dated 28th of September 2005 from its former holder Fakirchand Sawant could not be disputed. Indisputably, there is no instrument to show the conveyance of the suit land by the respondent. Nor there is any document to show that the suit land was registered as the property of the trust. In the face of the record, the Reference Court was wholly justified in discarding the objection on behalf of the appellant, submitted Mr. J.J. Patil, the learned Counsel for the respondent.

8. The submission on behalf of the respondent that the respondent had purchased the suit land, finds support in the sale deed (Exh. 30). It reveals that the suit land was purchased by the

respondent for digging a well therein to irrigate his adjoining agricultural land. The acquisition of title over the suit land by the respondent is, thus, established beyond cavil.

9. It is the case of the appellant that, subsequently, the respondent had transferred the suit land for the purpose of construction of temple thereon. This claim of the appellants is, however, not unequivocal. At one breath, it is asserted that the villagers had acquired the suit land for consideration. At the other breath, the appellants claim that the respondent had voluntarily conveyed the suit land, without consideration. In the cross-examination, Mr. Gowardhan Chavan (P.W.1), for the claimants, conceded that the suit land was not taken from the respondent. He went on to admit that the temple is situated in an area of around one *Guntha*. He expressed inability to state whether permission of the Village *Panchayat* was obtained to construct the temple. He was unable to state as to who were the office bearers of the trust. Mr. Uttam Rathod (P.W.2), for the claimants, was candid enough to concede that there is no document to show the ownership of the villagers over the suit land. He expressed his inability to state as to when the temple was constructed.

10. In the backdrop of aforesaid nature of the evidence, the Reference Court was justified in recording a finding that the claimant-objectors could not establish title over suit land. Once, it is shown that the respondent acquired ownership over the suit land on the strength of a registered instrument, and, conversely, there is no instrument to evidence the conveyance of the suit land by the respondent in favour of the claimants, no other inference as regards the title over the suit land is conceivable unless a clear case of dedication to God is made out. Moreover, the fact that the claim of claimants wavered from acquisition of the suit land for consideration to voluntary conveyance of the suit land by the respondent without consideration, works out the retribution of their claim.

11. The question which, however, comes to the fore is, whether the respondent is entitled to entire amount of compensation exclusively ? It is imperative to note that the competent authority, in the reference dated 3rd June 2017, had recorded that during the course of re-evaluation of the compensation in accordance with the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the existence of the temple over the suit land was recorded. It is imperative to note that in the award, Annexure-6, a sum of

Rs.13,37,352/- has been awarded for the structure over the suit land. The question that wrenches to the fore is, whether the respondent is entitled to lay claim to the super-structure over the suit land exclusively ?

12. At this juncture, the purpose for which the suit land was acquired by the respondent under sale deed (Exh.30) provides a legitimate answer. Evidently, the suit land was purchased for digging a well therein to irrigate the adjoining land of the respondent. The sale deed (Exh.30) does not record existence of any structure over the suit land at the time it was sold. Nor is it the claim of the respondent that he had constructed the temple over the suit land.

13. Two factors bear upon this issue. One, in the communication dated 23rd January 2017 (Exh.31), the contents of which were unequivocally admitted by the respondent during the course of his cross-examination, there is a categorical assertion that there is a public temple of Lord Maruti in the suit land. Undoubtedly, the respondent has claimed exclusive ownership over the suit land, in the said communication. Yet, the respondent asserted that in the event the entire compensation is paid to him, he would provide land for construction of the Maruti temple and was also ready to construct

the temple of Lord Maruti. Secondly, respondent conceded that he has not placed on record any material to show that the temple was constructed by him, either before the competent authority or the Reference Court. Indeed, the respondent denied that a *Sabha Mandap* (Meeting Hall) was constructed for the said temple by utilising the funds from the local MLA Constituency Development Fund. Nonetheless, the fact remains that a temple existed in the suit land and the competent authority has awarded a sumptuous compensation of Rs. 13,37,352/- for the structure over the acquired land.

14. The situation which thus obtains is that, indubitably, there were no structures when the suit land was purchased by the respondent. Secondly, it is not the claim of the respondent that he erected structure, or for that matter temple, over the suit land after purchasing the suit land. Thirdly, the existence of the public temple over the suit land is admitted in no uncertain terms by the respondent. Lastly, the respondent volunteered to give another piece of land for construction of temple and even to bear the expenses for the construction of the temple.

15. In the aforesaid view of the matter, it seems that the Reference Court lost sight of the fact that the entitlement for

compensation for the superstructure also arose for consideration. The Reference Court was within its rights in recording the finding that the respondent was the owner of the suit land. However, the Reference Court did not adequately advert to the issue of entitlement to compensation for the superstructure, which, as the material on record suggests, primarily consisted of temple of Lord Maruti. As a sumptuous sum of Rs. 13,37,352/- was awarded for the structure over the suit land, the entitlement thereto ought to have been decided by the Reference Court.

16. The upshot of aforesaid consideration is that the impugned order warrants interference to the extent of entitlement to and apportionment of compensation for structures over the suit land.

17. I am mindful of the fact that remitting the matter to the Reference Court would further deprive the respondent from getting the benefit of the compensation for the acquired land. I am of the considered view that the justice of the case would be met if the Reference Court is directed to pay the amount of compensation, excluding the compensation of Rs. 13,37,352/- for the superstructure, to the respondent forthwith and the matter is remitted back to the Reference Court for determination of entitlement to and apportionment of compensation awarded for the

superstructure.

18. The appeal, thus, deserves to be partly allowed. Hence the following order.

O R D E R

- I. The appeal stands partly allowed.
- II. The impugned order stands quashed and set aside to the extent it directs the payment of compensation of Rs.13,37,352/- (Rs. Thirteen lacs thirty seven thousand three hundred fifty two only) for the superstructure over the acquired land to the respondent.
- III. The matter stands remitted to the Reference Court for determination afresh as regards the entitlement to and apportionment of the compensation of Rs. 13,37,352/- awarded for superstructure on the suit land.
- IV. The Reference Court is requested to provide an opportunity to the claimant/objector and the respondent to lead further evidence, if they desire, and thereafter decide the aforesaid issue in accordance with law.
- V. It is made it clear that the Reference Court shall not be influenced by any of the observations made herein-above and

decide the entitlement to the aforesaid compensation on merits. By way of abundant caution, it is further clarified that the observations have been made primarily to highlight the fact that the entitlement to the compensation for superstructure has not been adequately considered by the Reference Court and, thus, the matter was required to be remitted to the Reference Court.

- VI. The parties shall appear before the Reference Court on 26th April 2021 at 10.30 am.
- VII. The Reference Court shall release the amount of the compensation and the interest accrued thereon, excluding the sum of Rs. 13,37,352/-, in favour of the respondent.
- VIII. In the circumstances, there shall be no order as to costs.
- IX. Decree be drawn accordingly.
- X. In view of disposal of the appeal, Civil Application No. 7049/2019 does not survive and accordingly stands disposed of.

(N.J. JAMADAR)
JUDGE