

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

FIRST APPEAL NO. 270 OF 2009

1. Smt. Bhartidevi wd/o Vishwanath Mane,
aged adult, Occ. Agriculturist,
R/o Malegaon, Tq. Malegaon, District Washim.
2. Vishwanath s/o Umaji Mane (died).

...APPELLANTS

Versus

The State of Maharashtra,
through Collector, Washim, District Washim.

...RESPONDENT

Shri V.K. Paliwal, Advocate for the appellant.
Shri A.M. Kadukar, A.G.P. for the respondent/ State.

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CORAM : PUSHPA V. GANEDIWALA, J.
DATE OF RESERVE : AUGUST 23, 2021.
DATE OF PRONOUNCEMENT : SEPTEMBER 17, 2021.

JUDGMENT :

The appellants/ claimants, being aggrieved and dissatisfied with the amount of compensation enhanced by the Reference Court, i.e., District Judge – II, Washim vide judgment and order dated 11/08/2008 passed in L.A.C. No. 30/2004 for their lands bearing Gat No. 115 admeasuring 1 hectare 52 R and Gat No. 111/1 admeasuring 2 hectares 2 R situated at Village Malegaon, Tq. Malegaon, District Washim (“the suit

property”), filed the present Appeal under Section 54 of the Land Acquisition Act, 1894 (**“the Act”**).

The facts of the case, in nutshell, may be stated as under :

2. The aforesaid suit property of the appellants/ claimants came to be acquired by the respondent/ State for public purpose by issuing notification under Section 4 of the Act, and the same was published in the Maharashtra Government Gazette on 27/11/1997. The declaration under Section 6 of the Act came to be published on 31/12/1998, and the final award came to be passed on 28/08/2000 by the Land Acquisition Officer (**“LAO”**). In the said award, the LAO valued the land of the claimants bearing Gat No.115 @ Rs.32,000/- and Gat No.111/1 @ Rs.62,000/- per hectare. Accordingly, the total compensation of the land bearing Gat No.115, including the statutory benefits, was fixed at Rs.91,216/-, which includes Rs.12,200/- towards trees, and Rs.5,05,580/- for land bearing Gat No.111/1, which includes Rs.1,90,015/- towards well and

Rs.2,328/- towards trees including statutory benefits.

3. Feeling dissatisfied with the amount of compensation awarded by the LAO, the claimants filed reference proceedings under Section 18 of the Act.

4. It is the case of the appellants/ claimants that the suit property was adjacent to the Malegaon city and is having great non-agricultural potentiality. It is fertile and irrigated land. They used to take Kharif as well as Rabi crops from it. The land is of superior quality for cultivation. It is stated that the LAO has not considered the sale instances of the adjacent lands, and passed the award just in a mechanical manner without considering the facts and circumstances of the case and the potentiality of the land. That on the basis of sheer guesswork, the compensation came to be fixed by the LAO. It is further stated that the claimants used to take double crop in a year. The claimants claimed amount of Rs.47,18,592/- towards the land value. The claimants also claimed compensation of Rs.1,000/- per tree.

5. The respondent/ State resisted the claim vide its written statement below Exh.7. In the written statement, the respondent supported the impugned award.

6. The Tribunal framed the following issues :

“i. Does the claimants prove that the compensation granted by the SLAO is inadequate ?

ii. Whether the claimants are entitled to enhanced compensation. If yes, to what extent ?”

7. The claimants examined claimant No.1 Bhartidevi below Exh.14 and brought on record the following documents :

- 7/12 extracts from the year 1989-90 to 1995-96 (Exh.25 – 25A to 25L)
- Joint measurement report (Exh.26)

The claimants also examined an expert witness Narendra Patil for valuation of trees (Exh.33).

The respondent/ State preferred not to examine any witness.

8. The Reference Court, on the basis of oral and documentary evidence on record, enhanced the compensation for land @ 65,000/- per hectare, Rs.2,00,000/- towards sandalwood trees and Rs.40,000/- towards orange trees along with statutory benefits. This judgment is impugned in this Appeal.

9. Appellant No.2 is died during the pendency of this Appeal.

10. I have heard Shri Paliwal, learned counsel for the appellant, and Shri Kadukar, learned A.G.P for the respondent/ State.

11. Shri Paliwal, learned counsel, read out the relevant portion from the impugned judgment, and also pointed out the relevant documents to buttress the stand of the claimants that

the subject land is of superior quality, and therefore, the rate of Rs.65,000/- per hectare, adjudicated by the Reference Court, is not in consonance with the material on record. He further relied on the judgment delivered by this Court in the case of **Pandurang s/o Shamrao Dhole (dead) thr. LRs Smt. Mirabai Pandurang Dhole & Ors. Vs. The State of Maharashtra & Ors. [First Appeal No. 592/1994 decided on 16/01/2017]**, wherein the co-ordinate Bench of this Court enhanced the compensation from Rs.65,000/- to Rs.1,30,000/- per hectare considering the subject land in that matter being perennially irrigated. He urged to enhance the compensation for land at least @ Rs.1,30,000/- per hectare.

12. On the contrary, Shri Kadukar, learned A.G.P, while supporting the impugned award, states that the appellant is not entitled for enhanced amount of compensation as the appellant has failed to prove the sale instances on record.

13. I have considered the rival submissions made on behalf of both the parties.

14. At the outset, it is not disputed that there were two wells situated in land bearing Gat No. 115, and one well in Gat No. 111/1. For all these three wells, three electric motor pumps were fixed by the claimants. Evidently, the claimants were taking both Rabi and Kharip crops from the subject land. There was a facility of underground pipeline installed on the subject land. Apart from this, the fruits orchard and sandalwood trees also were planted on the subject land. It is also an admitted fact on record that the LAO has not acquired pot-kharab land from the field of the claimants. There was pucca farm house built with cement and bricks.

15. In such circumstances, the value of the land @ Rs.65,000/- per hectare, adjudicated by the Reference Court, appears to be too meagre. The Reference Court did not distinguish as to whether the land is a dry crop or irrigated land. The co-ordinate Bench of this Court, vide judgment delivered in the case of **Pandurang s/o Shamrao Dhole** (*supra*), has enhanced the compensation for irrigated land @ Rs.1,30,000/- from Rs.65,000/- per hectare for dry crop land.

The Reference Court had fixed the rate @ Rs.65,000/- per hectare on the basis of guess work.

16. Considering the facilities and the perennial crops which the claimants were taking from the subject land, it appears there was a complete well developed set-up for the farm land of the claimants. The 7/12 extracts from the year 1989-90 to 1995-96 (Exh.25 – 25A to 25L) indicate various crops, fruit bearing trees and sandalwood trees were planted on the subject land. That there are three wells situated having electric motor pumps and underground pipeline facility. All these agricultural activities indicate that the claimants were very ambitious in cultivating their farm land. They wouldn't have imagined that one day, the Government would acquire their dreamland for meagre compensation, and that they had to knock the doors of the Court. That since around 25 years, the claimants are fighting to get at least reasonable compensation for their land, which were their livelihood.

17. For the reasons aforesaid, in my considered view, the appellants/ claimants would be entitled to receive the compensation for the suit property @ Rs.1,30,000/- per hectare with statutory benefits. As Shri Paliwal, learned counsel for the appellant, during his submissions in all his fairness pressed enhancement of compensation for land property only, I am not dealing with the issues with regard to the compensation for pipeline, trees, farmhouse, etc.

18. In this view of the matter, the impugned judgment and order dated 11/08/2008 passed by the District Judge – II, Washim in L.A.C. No. 30/2004 needs modification. Hence, the following order :

ORDER

- i. The Appeal stands partly allowed.
- ii. The respondent/ State shall deposit the enhanced amount of compensation towards the suit property @ Rs.1,30,000/- per hectare with all statutory benefits, with the

Registry of this Court within a period of twelve weeks. As appellant No.2 died during pendency of this Appeal, appellant No.1 is permitted to withdraw the amount after deposit of the same.

19. The Appeal stands disposed of. No costs.

JUDGE

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