

1

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

**FIRST APPEAL NO.121 OF 2008
WITH
CROSS OBJECTION NO.9 OF 2021**

FIRST APPEAL NO.121 OF 2008

1. State of Maharashtra

Represented by

Collector, Yavatmal.

2. The Special Land Acquisition Officer,
Upper Painganga Project, Pusad.

3. The Executive Engineer,
Upper Painganga Project,
Umarkhed, Taluka Pusad,
District Yavatmal.

..... **Appellants.**

:: VERSUS ::

Bhagwan Mahadu Nandanwar,
Aged about 49 years,
Occupation - cultivator,
R/o Bhagatsingh Ward,
Umarkhed, district Yavatmal.

..... **Respondent.**

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Mrs.Shamsi Haider, Assistant Government Pleader for Appellants.
Shri D.G.Patil, Counsel for the Respondent.

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CROSS OBJECTION NO.9 OF 2021

Bhagwan s/o Mahadu Nandanwar,
Aged about 52 years, occupation - cultivator,
R/o Bhagatsingh,
Taluka Umarkhed, district Yavatmal.

..... **Cross objector.**

:: VERSUS ::

1. The State of Maharashtra,
Represented by
Collector, Yavatmal.

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

3. The Executive Engineer,
Upper Painganga Project, Umarkhed,
Taluka Pusad, District Yavatmal. **Respondents.**

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Shri D.G.Patil, Counsel for the Cross objector.
Mrs.Shamsi Haider, Assistant Government Pleader for
Respondents.

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CORAM : V.M.DESHPANDE, J.
DATE : NOVEMBER 18, 2021

ORAL JUDGMENT

1. These two proceedings arise out of judgment and decree dated 13.4.2004 passed by learned Joint Civil Judge Senior Division, Pusad in Land Acquisition Case No.188/1997.

2. By the judgment and decree, impugned in these proceedings, the reference filed on behalf of the respondent, who is also cross objector, was partly allowed.

3

3. Heard learned Assistant Government Pleader Mrs.Shamsi Haider for appellants/State and learned counsel Shri D.G.Patil for the respondent/cross objector.

4. According to learned Assistant Government Pleader for appellants/State, compensation determined by learned Judge of the Reference Court is on excessive side. She, therefore, submitted that the appeal be allowed.

5. According to learned counsel for the respondent/cross objector, learned Judge of the Reference Court has not adequately determined compensation of land acquired and also erroneously refused to enhance compensation in respect of a well and three mango trees. He, therefore, submitted that his cross objection be allowed.

6. In view of rival submissions, a only point that falls for my determination is, as under:

Whether learned Judge of the Reference Court
has properly determined compensation?

4

7. Undisputedly, the respondent/cross objector, who will be referred to as “**the claimant**” in this judgment for the sake of brevity, is a lawful owner of land bearing survey No.160/5 situated at Umarkhed, district Yavatmal. Total area of the land, owned and possessed by the claimant, is 1.71 hectare. Out of that, 1H 31R was acquired by the State of Maharashtra for public purpose of Isapur Left Bank Canal. Section 4 Notification under the Land Acquisition Act was published on 19.9.1994 and Award was declared on 1.10.1996.

8. The claimant submitted his claim statement before the Land Acquisition Officer. The Land Acquisition Officer, under Award dated 1.10.1996, fixed market price of the land acquired together with trees and well at Rs.82,111/-. He granted Rs.24,633/- as 30% solatium and Rs.20,528/- as 12% component and accordingly he declared that the claimant was entitled to receive amount Rs.1,27,272/-. Needless to mention that the said amount was withdrawn by the claimant, however under protest and filed a reference petition well within limitation.

9. Before the Reference Court, the claimant submitted

5

that he is entitled for Rs.1,50,000/- per hectare as market value of the land and Rs.75,000/- as compensation for well and Rs.45,000/- towards three mango trees. The claim put forth in the reference petition was contested by the State of Maharashtra by filing its written statement. The claimant entered into witness box and also filed 7/12 extract (Exhibit-21) and index in respect of sale instance (Exhibit-23). No officer from the State of Maharashtra was entered into witness box. Learned Judge of the Reference Court, after appreciating oral as well as documentary evidence as brought on record, found that the Land Acquisition Officer has not properly determined and fixed market price of the land. In his considered view, market value of the land is Rs.1.00 lac per hectare. However, he disallowed the claim of the claimant in respect of mango trees and the well.

10. Exhibit-21, 7/12 extract, shows that there is one well. Exhibit-21, also shows that there are two mango trees and not three, as claimed by the claimant. Further, evidence of the claimant does not show age of mango trees. His evidence is conspicuously silent as to whether those mango trees were fruit

bearing trees.

In this view of the matter, I find that no exception can be taken to finding recorded by learned Judge of the Reference Court in disallowing the claim of the claimant in respect of price of mango trees.

11. Similarly, though the claimant claimed Rs.75,000/- towards well, the claimant's evidence does not inspire confidence as to whether the said well was constructed well. In absence of any positive evidence about nature of construction of the well, there is no any other option for this Court than to accord with finding given by learned Judge of the Reference Court in not granting any compensation on that count.

12. That leaves this Court to determine as to whether learned Judge of the Reference Court has correctly determined value of the land as its market price and compensation.

13. Evidence of the claimant shows that the land in question is situated at Umarkhed, district Yavatmal and is just a furlong inside from the State Highway. His unchallenged evidence

7

shows that there is a petrol pump at a distance of 1000 feet from his land. As per his evidence, at the time of issuance of Notification under Section 4 of the Land Acquisition Act, there exists S.T.Depot, Panchayat Samiti, Tahsil Office, Degree College, I.T.I., and the Civil Court etc.. His evidence also shows that at the time of the said Notification, there were three Sugar Factories.

14. As per evidence of the claimant, one Digambar Piraji Kalane, a resident of Umarkhed, sold his land bearing survey No.178/1 admeasuring 0.46R in the year 1988 to one Ramji Narayan Digewar, a resident of the very same place i.e. Umarkhed for Rs.80,000/-. Though sale deed is not placed on record, a certified copy of extract of register of sale instance duly maintained by Authorities is placed on record and it is at Exhibit-23. Perusal of Exhibit-23 shows that Digambar Piraji Kalane sold his agricultural land admeasuring 0.46R in the year 1988 to one Ramji Narayan Digewar for Rs.80,000/-. In this case, Notification under Section 4 of the Land Acquisition Act was published on 19.9.1994. Thus, the sale instance is much prior to Section 4 Notification. If value of 0.46R for Rs.80,000/- is taken into consideration, value

8

per hectare will be at Rs.1,73,930/-. The claimant was cross examined in respect of Exhibit-23, however only in the nature of suggestions. It was for the State of Maharashtra to point out that land covered under Exhibit-23 was non-agricultural land. The State of Maharashtra did not adduce evidence in that behalf and, therefore, we can conveniently read Exhibit-23 as a sale instance of agricultural land.

15. In view of the aforesaid, though learned Judge of the Reference Court enhanced compensation, in my view, proper market price was not determined by learned Judge of the Reference Court. Way back in the year 1988, price of agricultural lands in vicinity was Rs.1,73,913/- per hectare. However, the claimant has restricted his claim at the rate of Rs.1,50,000/- per hectare.

16. In this view of the matter, I pass following order:

ORDER

(1) First Appeal No.121/2008 is hereby **dismissed**.

(2) Cross Objection No.9/2021 filed by the claimant is **partly allowed**.

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9

(3) The value of the acquired land is determined at Rs.1,50,000/- per hectare instead of Rs.1,00,000/- lac per hectare as determined by learned Judge of the Reference Court.

(4) The State of Maharashtra is directed to deposit difference of amount along with statutory benefits in this Court within a period of two months from today.

(5) It is stated that the State of Maharashtra deposited entire decretal amount before learned Judge of the Reference Court and 50% of the deposited amount is withdrawn by the claimant. The claimant is permitted to withdraw balance 50% amount along with interest accrued thereon from learned Judge of the Reference Court.

The first appeal so also cross objection are disposed of accordingly. No costs.

JUDGE

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