

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

FIRST APPEAL NO.231/2008

1. The State of Maharashtra,
through its Collector, Akola,
District Akola.
 2. Sub-Divisional Officer and
Special Land Acquisition Officer for
Dagadparwa Dam,
Tq. Barshitakli, District Akola.
 3. Executive Engineer of
Minor Irrigation for Dagadparwa Dam,
Akola, Tq. & District Akola.
- ...APPELLANTS/ORI.
RESPONDENTS (ON
R.A.)

---VERSUS---

Abdul Rauf Abdul Gani,
Aged about 38 years,
Occ. - Agriculturist,
R/o. Barshitakli,
Tq. Barshitakli, District Akola.

...RESPONDENT/ORI.
CLAIMANT (ON R.A.)

Mr. M. A. Kadu, A.G.P for the Appellants.
Mr. M. D. Lakhey, Advocate h/f. Mr. A. B. Darekar, Advocate for the
Respondent.

CORAM : M. S. SONAK, J.

DATE : 08.12.2021.

ORAL JUDGMENT :

1. Heard learned Counsel for the parties.
2. This appeal challenges the judgment and award dated
21.04.2006 made by the Reference Court in Land Acquisition Case

No.96/2002 and enhancing the compensation in respect of the acquired land from Rs.40,200/-per hectare to almost Rs.1,50,000/- per hectare. In addition, the Reference Court has enhanced the compensation in respect of the three mango trees, the pipeline, the well, and the house property situated in the acquired land.

3. Mr. M. A. Kadu, the learned Assistant Government Pleader submits that the enhancement is not justified in the present case because the two sale instances referred to in the impugned award, were not comparable. He submits that even assuming that the sale instances were comparable, in terms of the same, the rate was approximately Rs.1,16,000/- per hectare. Thus, even if some enhancement is allowed, the same could never have exceeded Rs.1,25,000/- per hectare. He relied on the decision of this Court in *State of Maharashtra Vs. Fatimabi Musa and Ors.* in *First Appeal No.312/2008* decided on 14.09.2018, in which the states appeal questioning the enhancement to Rs.1,25,000/- for the land acquired in the same village and possibly under the same notification came to be dismissed.

4. Mr. M. A. Kadu, the learned Assistant Government Pleader also submitted that there was no warrant for an increase of compensation from Rs.7,000/- to Rs.15,000/- per mango tree. He submits that in this case, there were two valuation reports

produced at Exh.27 and 28 containing different valuation rates. He submits that the Reference Court was not justified in relying on the valuation report containing the higher rates without giving any cogent reasons for the same.

5. For all the aforesaid reasons Mr. M. A. Kadu, the learned Assistant Government Pleader for appellants submits that the impugned award warrants interference.

6. Mr. M. D. Lakhey, the learned Counsel for the claimant counters the submissions of the learned Assistant Government Pleader and relies on the reasoning reflected in the impugned award. He submits that the acquired land had irrigation facilities and was better than the land in the comparable sale instances. He, therefore, submits that is no error in the impugned award. He submits that one of the valuation reports in respect of the well and the other in respect of the house property. He, therefore, submits that there is no contradiction in appreciation of the evidence and for all these reasons, the appeal deserves to be dismissed.

7. The rival contentions now fall for determination.

8. In this case, the Reference Court has relied upon the two sale instances of the year 1997 in respect of properties from the same village and immediately adjoining village. The evidence on record bears out that lands were acquired in this case from the

village Atkali as well as the neighboring village Punoti to which the other sale instance relates. Having regard to these factors, the Reference Court cannot be faulted for having relied upon the sale instances. Even in the judgment and order dated 14.09.2018, this Court approved the action of the Reference Court in relying upon the sale instance of 15.04.1997 and based thereon an enhanced the compensation to Rs.1,25,000/- per hectare.

9. In this case, the sale instances indicate the rate at approximately Rs.1,16,000/- per hectare as was correctly contended by Mr. M. A. Kadu, the learned Assistant Government Pleader. However, the sale instances were executed almost 15 months before the date of Section 4 notification. Therefore, appreciation at the rate of 10% per anum is due. Besides, there is some substance in the contention of the learned Counsel for the respondent that the acquired lands were slightly better than the sale instances. Having regard to these factors, the compensation can be determined at the rate of Rs.1,30,000/- per hectare instead of Rs.40,200/- determined by the Land Acquisition Officer or Rs.1,50,000/- determined by the Reference Court. To this extent, the appeal can be partly allowed.

10. On the aspect of two valuation reports at Exh.27 and 28, on deeper scrutiny, it is clear that one of the valuation report relates to the well and the other relates to the house property. The

valuer has valued the well at Rs.1,40,000/- and house property at Rs.67,500/-. The Reference Court has awarded compensation of only Rs.40,000/- towards the house property and Rs.20,000/- towards the pipeline and Rs.1,40,000/- towards the well. All this is quite consistent with the two valuation reports. Thus, the compensation in respect of the pipeline, the well, the house property calls for no interference in this appeal.

11. Insofar as the three mango trees are concerned, the Reference Court has simply observed that in a connected matter, compensation at the rate of Rs.7,000/- was awarded for each mango tree, and therefore, in this case, Rs.15,000/- should be awarded for each mango tree. This reasoning cannot be approved. If Rs.7,000/- was awarded in a connected matter then, there is no reason as to why it should be more than double in this matter. Therefore, the compensation in respect of the three mango trees is reduced from Rs.45,000/- to Rs.21,000/-.

12. Thus, this appeal is disposed of by making the following order.

a] The compensation amount is reduced from Rs.1,50,000/- per hectare to Rs.1,30,000/- per hectare.

b] The compensation in respect of three mango trees is reduced from Rs.45,000/- to Rs.21,000/-.

c] Save the aforesaid modifications, the impugned award is not interfered with.

13. If the awarded amount has been deposited in this Court, then, the claimants are permitted to withdraw the compensation amount as now determined by this Court and the balance amount is to be returned to the appellant/State. Both the appellants as well as the claimants will be entitled to withdraw proportionate interest on the deposited amount if any.

14. The appeal is disposed of in the aforesaid terms. There shall be no order for costs.

15. Pending application(s), if any, do not survive(s) and even the same are disposed of.

(M. S. SONAK, J.)

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