

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

FIRST APPEAL NO. 573 OF 2013

APPELLANTS : 1. Ashok S/o Shamrao Nikhar
Age – about 55 years, Occu. - Cultivator

2. Maroti S/o Shamrao Nikhar
Age – about 50 years, Occu. - Cultivator
Both R/o – Waifad, Tah. And Dist. -
Wardha

VS.

RESPONDENTS : 1. State of Maharashtra
Through the Collector, Wardha

2. Special Land Acquisition officer
Kunbandi project, Wardha

3. The Assistant Engineer (Grade-I)
Minor Irrigation Local Sector Sub
Division, in front of Yeshwant Arts
College, Wardha, Tah. and District –
Wardha.

Mr. D.R. Bhoyar, Advocate for the appellants
Mr. M.A. Kadu, AGP for the respondents No.1 and 2

CORAM: VM.DESHPANDE, J.

DATE : OCTOBER 21, 2021

ORAL JUDGMENT :

1. This appeal is filed under Section 54 of the Land Acquisition Act read with Section 96 of the Civil Procedure Code to challenge the judgment and decree passed by the learned 4th Joint

Civil Judge (Senior Division), Wardha, dated 18/02/2012 in Land Acquisition Case No.4/2003. This appeal was admitted on 21/08/2013. Paper book is ready. Record and proceedings are also called and those are before the Court.

2. This appeal is filed by the claimants / land owners. The judgment and decree of the Reference Court is questioned only to the extent of grant of compensation in respect of the orange trees. In view of the said aspect that the claim in this appeal is restricted only for the compensation for the orange trees, in this judgment this Court will be discussing only that aspect.

3. Heard Shri D.R. Bhoyar, learned counsel for the appellants and Shri M.A. Kadu, learned Assistant Government Pleader for the respondents No.1 and 2.

4. The facts giving rise to this appeal are in very short compass :

The State of Maharashtra decided to acquire lands for the public purpose of Kunbandi Irrigation Project in the Wardha District. In that behalf on 09/03/1995, notification under Section 4 of the Land Acquisition Act was published disclosing the

intention of the State to acquire various lands, including the land of the present appellants i.e. Survey No. 664 situated at Mouza Waifad, Tahsil and District Wardha. Section 6 notification was published on 09/02/1996. The land acquisition proceedings before the Land Acquisition Officer were registered as Land Acquisition Case No. 48/LAQ-47/92-93 of Mouza Waifad No. 390, Tahsil and District Wardha. The Land Acquisition Officer declared Award on 16/04/1999.

5. *Qua* the present appellants, the Land Acquisition Officer has granted compensation for the entire land, which was acquired under the Award i.e. 2.06 HR Rs.80,000/- and for orange trees the Land Acquisition Officer has given Rs.2,05,152/-.

6. Being dis-satisfied with the Award, the appellants filed reference under Section 18 of the Land Acquisition Act before the Reference Court. The said was registered as Land Acquisition Case No.4/2003 and it was allotted to the file of the learned 4th Joint Civil Judge (Senior Division), Wardha. In the Reference Court, the appellants demanded Rs.3,00,000/- for the acquisition of their entire land. Of course, they pointed out that they have received Rs.80,000/- towards the cost of their land, therefore, their net

claim for compensation for land was Rs.2,20,000/-. Before the Reference Court, the appellants claimed Rs.1500/- per tree for 400 orange trees and on that count, they demanded Rs.6,50,000/- after the deduction of Rs.2,05,151/- and on that count as awarded by the Land Acquisition Officer their net claim was for the trees was Rs.4,50,000/-. They have also demanded Rs.1,00,000/-, as a compensation for the well situated at their agricultural land.

7. On behalf of the appellants, appellant No.1 Ashok - Shamrao Nikhar entered into the witness box. He was cross-examined. No other witness was examined by the appellants. On behalf of the State, Shri Jagdish Bhagwant Sangitrao, Land Acquisition Officer entered into the witness box. He was also cross-examined. After examining the said witness the State has filed a closure pursis.

8. After hearing the learned counsels and after appreciating the evidence as brought on record, the learned Reference Court passed a judgment and decree on 18/02/2012, whereby the learned Court directed that the appellants are entitled to receive Rs.72,000/- per hectare by way of compensation for the land, similarly, Rs.33,000/- were awarded as a compensation for

well. Together with the aforesaid compensation, the learned Reference Court directed that the claimants / appellants will be entitled for all other statutory benefits. Though it was a claim on the part of the appellants before the Reference Court, compensation for 400 orange trees after deduction of the value of the tree granted by the Land Acquisition Officer, the learned Judge did not grant any amount in addition to the compensation granted by the Land Acquisition Officer for orange trees. Being aggrieved by refusal of the said claim, the present appeal is filed.

9. Though in the Reference Petition the appellants have claimed Rs.6,50,000/- as a compensation for the trees @Rs.1500/-, obviously, it is a calculation mistake and it should be Rs.6,00,000/-. Consequently, the further calculations in the statement of claim also goes wrong and the learned counsel for the appellants submitted that the net claim for the value of the orange trees is Rs.4,00,000/-.

10. After hearing the learned counsels for the parties and after perusing the Award of the Land Acquisition Officer and the other documents as available on record it is an undisputed fact that the appellants, who are the land holders and owners of land Survey

No.664 of Mouza Waifad, area 2.06 HR was having 400 orange trees. Exhibit 34, which is 7/12 extract also shows about the existence of 400 orange trees on Survey No.664. Not only that in the Award itself, the Land Acquisition Officer has granted compensation for 400 orange trees and total compensation is Rs.2,05,152/-. Thus, by calculation, the Land Acquisition Officer has given compensation @Rs.512/- per orange tree. The appellants have claimed compensation @Rs.1500/- per orange tree. Therefore, the question which is involved in this appeal is, whether the appellants are entitled to claim compensation for each orange tree @ Rs.1500/- instead of Rs.512/- as granted by the Land Acquisition Officer.

11. From the perusal of the impugned judgment, it is clear that the learned Reference Court has refused to grant and or enhance the compensation for the trees on the ground that the appellants did not adduce any evidence inasmuch as no valuation report is placed on record.

12. True it is that no valuation report is filed on record. The learned counsel for the appellants in addition to that fairly state that even the appellants did not adduce evidence of any expert.

13. It is the submission of the learned Assistant Government Pleader for the respondents that the claimants failed to prove the exact age of the orange trees. He also submitted that in absence of any evidence that at the relevant time the trees were fruit bearing trees, no fault can be attributed to the Award granting compensation for the trees by the Land Acquisition Officer and also the learned Judge of the Reference Court has rightly refused to give any compensation.

14. On behalf of the appellants, as we have seen that Ashok Nikhar has entered into the witness box. On oath he did state that the age of the orange trees was more than six years. Exhibit 34 - the 7/12 extract as we have seen confirmed the existence of 400 orange trees at the time of publication of Section 4 notification and Section 6 notification. It is also to be noted here that it was not the case of the State that at the time of obtaining possession of land in question, there were no orange trees were in existence. That postulates that at the time of publication of two notifications and at the time of obtaining possession of the land of the appellants, 400 orange trees were existing.

15. In the examination-in-chief on oath, the appellant has stated that the age of the tree was six years. This particular assertion made by the appellant on oath is not at all seriously challenged on behalf of the State Authority when the appellant was cross-examined. A passing suggestion was given to the appellant that the age of the tree might be less than three to four years. Though the said suggestion was given, it was stoutly denied by the appellant. Further, though the Land Acquisition Officer entered into the witness box his evidence is conspicuously silent in respect of the age of the orange trees. If that be so, there should not be any difficulty in the light of such evidence available on record to accept the version of the appellants / claimants about the age of the orange trees.

16. The learned counsel for the appellants invited my attention to the Authority to the pronouncement of the Hon'ble Apex Court reported in **(2018) 7 SCC 530** in the case of **Bilquis Vs. State of Maharashtra and Others** and an unreported judgment of this Court (Coram : Smt. Anuja Prabhudesai, J.) dated 28/01/2021 in First Appeal No.156/2018 (The Executive Engineer, Bembla Project Vs. Kishor Awadhutrao Umaratkar and others) and First

Appeal No. 728/2014 (Kishor Awadhutrao Umaratkar Vs. State of Maharashtra and Others) to buttress his submission and the claim put-forth by the appellants that they are entitled to compensation @Rs.1500/- per orange tree.

17. In the case of **Bilquis Vs. State of Maharashtra** (supra), Section 4 notification was published on 13/11/1986 and the declaration under Section 6 of the Act was published on 11/04/1987. In the said case, there were 325 orange trees standing on the land in question. The Hon'ble Apex Court found in paragraph No. 9 of the said judgment that though the High Court found that there were more than 300 orange trees, which were about four to five years old, no compensation was awarded and thereafter in paragraph No. 10, the Hon'ble Apex Court observed that, "it is not in dispute that generally, the orange trees would start yielding fruits from the fifth year. Since the orange plants are about four to five years old, the Reference Court was justified in observing that the orange trees had just then started yielding fruits to the claimant. Even otherwise, this Court cannot ignore the fact that the trees were very much ripe for yielding orange fruits." Therefore, it was the dictum of the Hon'ble Apex Court that generally the orange trees started fruits bearing when they became

four to five years old. In the present case, in absence of any challenge to the positive evidence, as adduced from the witness box by the appellants, the age of trees standing in the agricultural field was six years.

18. In unreported case of **The Executive Engineer, Bembla Project Vs. Kishor Awadhutrao Umaratkar and others** and **Kishor Awadhutrao Umaratkar Vs. State of Maharashtra and Others** (supra) this Court decided two appeals by the common judgment, one by the State and another by the claimants. In paragraphs No.17 and 18 it was observed as under :

“17. The aforesaid decision would not be applicable to the facts of the present case, as undisputedly the Claimant has neither examined any expert witness nor sought to rely upon thereport prepared by any other expert witness. In the instant case, as noted above, there were admittedly 175 orange trees in the acquired land, in respect of which the Claimants has not been awarded any compensation for failure to examine expert and prove age or yield. It is pertinent to note that the survey records at Exhibit 46, 47 and 48 indicate that the said trees were existing since the year 1993-94 which fact would indicate that the orange trees in the acquired land were more than 5-6 years of age as on the date of the notification. As observed by the Apex Court in Bilquis (supra) the orange trees generally start yielding fruits from the fifth years. It can thus be safely inferred that the orange trees in the acquired land were fruit bearing trees.

18. The Claimant has deposed that he used to derive income of Rs.1,50,000/-. The Claimant has

claimed compensation of Rs.7,000/- per orange tree. It is true that the Claimant has not examined any expert witness. However, it will not be in the interest of justice to deprive him of the compensation, when the evidence on record amply proves existence of 176 fruit bearing trees coupled with the fact that the Claimant has not been paid any compensation in respect of these tree. Hence, under these peculiar facts of the case and considering the age of the trees the statement of the Claimant about annual income, the productive life span of the orange tree and upon deducting the expenses, value of each orange tree can be fixed at Rs.3000/-”

19. Thus, after considering the dictum in the case of **Bilquis Vs. State of Maharashtra** (supra), this Court has decided to determine the value per orange tree @Rs.3000/- even though there was no expert evidence or valuation report.

20. In the case of **Bilquis Vs. State of Maharashtra** (supra), Section 4 notification was of the year 1986 and Section 6 declaration was of the year 1987. In First Appeals decided by this Court in the cases **The Executive Engineer, Bembla Project Vs. Kishor Awadhutrao Umaratkar and others** and **Kishor Awadhutrao Umaratkar Vs. State of Maharashtra and Others** (supra), Section 4 notification was of the year 2000. In the case at hand, Section 4 notification was of the year 1995 and Section 6 declaration was of the year 1996.

21. In view of the aforesaid position as established from the record, I am of the view that the learned Judge of the Reference Court has erred in not granting compensation for the 400 fruit bearing orange trees. Resultantly, I pass the following order :

(i) The appeal is allowed. The judgment and decree passed by the learned 4th Joint Civil Judge (Senior Division) Wardha, dated 18/02/2012 in Land Acquisition Case No.4/2003, is set aside to the extent it refuses to grant enhanced compensation for each orange tree.

(ii) It is held and declared that the appellants are entitled to receive compensation for 400 orange trees @Rs.1500/- i.e. they are entitled for the compensation of Rs.6,00,000/- (-) the compensation granted to them on that count i.e. Rs.2,05,151/-. Thus, the appellants are entitled to receive Rs.4,00,000/- by way of compensation for 400 orange trees together with all statutory benefits.

(iii) The respondents are directed to deposit Rs.4,00,000/- along with all statutory benefits, as directed above within a period of three months from today before the learned Reference Court. On such deposit claimants will be entitled to withdraw the same.

(iv) It is directed that the parties shall bear their respective costs.

(v) Decree be drawn accordingly.

JUDGE

MP Deshpande