

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

First Appeal No.865/2016

Ramchandra Arjun Bhajipale,
thr its P.O.A. Sanjay Ramchandra Bhajipale,
Aged about 70 years, Occ.- Agriculturist,
R/o.-Chichal, Tahsil Paoni, District Bhandara.

(Amended as per Court's Order dated 22-12-2018)

1-a) Smt. Lilabai wd/o Ramchandra Bhajipale,
Aged about 70 years,

Appellants.
(on R.A.)

1-b) Radheshyam s/o Ramchandra Bhajipale,
Aged about 50 years,

1-c) Raman s/o Ramchandra Bhajipale,
Aged about 45 years,

1-d) Sanjay s/o Ramchandra Bhajipale,
Aged about 39 years,
All R/o Chinchal, Tq. Paoni, District Bhandara.

Versus

1) The State of Maharashtra,
through Secretary,
Ministry of Irrigation, Mantralaya, Mumbai.

Respondents.
(on R.A.)

2) The Chief Engineer,
V.I.D.C., Sinchan Bhawan, Nagpur.

3) The Executive Engineer,
Gose Khurd Rehabilitation Division, Bhandara,
District Bhandara.

4) The Collector,
Collector Office, Bhandara, District Bhandara.

5) The Special Land Acquisition Officer,
V.I.D.C. No.9, Collectorate, Bhandara, Tahsil and
District Bhandara.

Shri C.R. Najbile, Adv for appellants.

Shri M.A. Kadu, Adv for resp. nos.2 and 3.

Ms T.H. Udeshi, AGP for resp. nos.1, 4 and 5.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 10 FEBRUARY 2021

ORAL JUDGMENT

The appellants herein have challenged the judgment and award dated 01-01-2016 passed by the Reference Court, Bhandara, in Land Acquisition Case No.50/2006.

2. The brief facts necessary to decide this appeal are as under :-

A portion of land admeasuring 0.48 R from Gat No.545, and 1.73 H from Gat No. 546, was acquired for Gose Khurd Dam Project at Bhandara. Notification under Section 4 of the Land Acquisition Act, 1894 (for short, 'the Act') was issued on 18-03-1999. The Award under Section 11 of the Act, came to be passed on 14-05-2001. The Land Acquisition Officer awarded compensation at the rate of Rs. 83,000/- (rupees eighty three thousand only) per hectare in respect of the land acquired from Gat No.545, which was classified as dry crop land and

Rs. 1,25,600/- (rupees one lakh twenty five thousand six hundred only) in respect of land under Gat No.546, which was classified as irrigated land. Being dissatisfied with the quantum of compensation awarded by the Land Acquisition Officer, the appellants sought for reference under Section 18 of the Act.

3. The Reference Court after considering oral as well as documentary evidence adduced by the appellants enhanced the compensation in respect of Gat No.546 to Rs. 83,000/- (rupees eighty three thousand only) per hectare and Rs. 1,25,600/- (rupees one lakh twenty five thousand six hundred only) per hectare in respect of land under Gat No.546. The Reference Court declined to grant any compensation in respect of the Orange trees and other trees. Being aggrieved by this judgment and award, the appellants have filed this appeal under Section 54 of the Act.

4. Learned Counsel for the appellants submits that the Reference Court has not considered the Sale Deeds produced by the appellants and has not assigned any reasons for discarding the said evidence. He submits that the Sale Deed at Exhibit-31 is in respect of a similar land situated in the same village and there was no reason to discard the said evidence.

5. Shri Kadu, learned AGP submits that the Sale Deed is in respect of a small plot and hence the said Sale Deed, not being a comparable instance, cannot be relied upon for determining value of a large tract of land.

6. Having heard the learned Counsel for the parties and upon perusal of the records the only question for consideration is whether the compensation awarded by the Reference Court is just, fair and reasonable.

7. It is not in dispute that the land under Gat No.545 is a dry crop land whereas, the land in Gat No.546 is an irrigated land. The evidence of Sanjay Bhajipale reveals that the acquired land is situated in village Chichal and is located in the close vicinity of the residential locality. He has deposed that the market rate of the land was Rs. 2,00,000/- per hectare as on the date of the notification. He has produced Sale Deed at Exhibit-31 dated 24-12-1996 between *Parmanand Ramaji Nakhate and Sau. Urkudi Dnyaneshwar Panchbhai*. The said Sale Deed plot admeasures 0.48 R and is situated in the same village. The said plot was sold for total price of Rs. 44,000/-. The claimant has also produced Sale Deed dated 28-10-1996 at Exhibit-32 between *Haridas Narayan Dhawale and Ramchandra Budhaji Ramteke*, in respect of land situated in the adjoining village. The claimant had deposed that the rate offered by the Land Acquisition Officer was much below the prevailing market rate.

8. It is to be noted that the Reference Court has not assigned any reasons either for discarding the sale instances or for enhancing the compensation to Rs.20,000/-(rupees twenty thousand only) per hectare. Suffice it to say that the determination of compensation has to be reasoned and just based on evidence on record and not the outcome of

wild or arbitrary guess work. The impugned judgment and award reflects total non-application of mind. Hence, it is necessary to consider the evidence on record and examine whether the quantum of compensation granted for the land and the trees was as per the rate prevailing as on the date of the notification.

9. The claimant has deposed that the acquired land was irrigated fertile land, wherein he used to grow Cotton, Chilies, Wheat, Peas etc and derive profit of Rs.1,00,000/- (rupees one lakh only) to Rs.1,50,000/- (rupees one lakh fifty thousand only) per annum.

10. The Sale Deed (Exhibit-31) is in respect of an irrigated land situated in the same village. The nature of the said land is similar to the nature of the land under Gat No.546 considering the proximity of time and location in the similarity of the nature of the land the same Sale Deed can be relied upon as 'comparable instance'. He has deposed that the land was in the close vicinity of the residential locality and had construction potentiality. The claimant has not examined a expert and has not adduced cogent evidence to assess the market value of the land by 'Capitalisation of Net Income Method'. He has based his claim on two Sale Deeds at Exhibit-31 and Exhibit-32. It is well settled that 'Comparable Sales Method' is one of the safest mode to determine the Market Value of the land provided that the sale transaction is bonafide and the sale instance is comparable. In the instant case the Sale Deed at Exhibit-32 is in respect of the land in the adjoining village. There is no

evidence on record to prove similarity in nature of the said Sale Deed land *vis-a-vis* the acquired land. Hence, the said sale instance cannot be considered as a comparable instance.

11. The Sale Deed at Exhibit-31 is in respect of the land situated in the same village. By the said Sale Deed the vendor had purchased irrigated land admeasuring 8 R out of 33 R for total price of Rs. 44,000/- (rupees forty four thousand only), which is equivalent to Rs.5,50,000/- per hectare. The Sale Deed at Exhibit-32 was executed two years prior to Section 4 Notification. Considering the rise in the price of land at 10%, the rate as on the date of notification comes to Rs. 6,60,000/-per hectare.

12. The Sale Deed plot is a much smaller plot as compared to the acquired land. It is well known that the size of land constitutes an important factor to determine the market value, as small plots have ready purchasers and fetch higher price as compared to large tract of land. Hence, it is necessary to adopt the principle of deduction to arrive at the market value of the large tract of land. Considering the difference in the size and deducting 65%, the value of irrigated land can be fixed at Rs. 2,31,000/-(rupees two lakh thirty one thousand only). On this basis, the value of the land under Gat No.545 which is dry crop land can be fixed at Rs. 1,15,000/- (rupees one lakh fifteen thousand only).

13. Though the appellant has claimed compensation in respect of Orange and other trees, he has not produced survey records or any other evidence either documentary or oral to prove existence of trees in the acquired land as on the date of notification. The appellant has also not examined any valuer. In the absence of such evidence, the appellant is not entitled for any compensation in respect of the trees.

14. Hence, the following order is passed :-

ORDER

- (a) The appeal is partly allowed.
 - (b) The appellants are held to be entitled for the enhanced compensation at the rate of Rs.2,31,000/- per hectare in respect of acquired irrigated land under Gat No.546 and Rs. 1,15,500/- per hectare in respect of dry land acquired from Gat No.545.
 - (c) The judgment and award stands modified accordingly.
 - (d) The acquiring body to deposit the balance amount of compensation with statutory benefits within a period of six months.
15. The claimants are entitled to withdraw the said amount.

16. Civil Applications, if any, stand disposed of in view of the disposal of appeal.

[Anuja Prabhudessai, J]