

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

FIRST APPEAL NO.271/2014

Executive Engineer (VI.D.C.),
Medium Project Division, Nagpur.

...APPELLANT

VERSUS

1. Madhav Daulat Dhole,
Aged about 59 years, Occ.-Cultivator,
R/o.-Nara, Tah.Karanja Ghadge, Dist. Wardha.
2. State of Maharashtra
through Dist. Collector, Wardha.
3. Special Land Acquisition Officer,
Minor Irrigation Works, Wardha.
4. Agricultural Officer, Karanja,
Tah. Karanja, Dist. Wardha.

...RESPONDENTS
On R.A.

Shri J.J. Chandurkar, Advocate for appellant.
Mrs. Varsha Wasu (Dhoble), Advocate for resp. no.1.
Ms. H.N. Jaipurkar, AGP for resp. nos. 2, 3 and 4.

CORAM : PUSHPA V. GANEDIWALA, J.
Date : 29-09-2021.

ORAL JUDGMENT :

The judgment and award passed by the 2nd Joint Civil Judge Senior Division, Wardha in Land Acquisition Case No.122/2004 on 11-04-2012, is the subject matter of challenge in this Appeal preferred by the appellant-VI.D.C., whereby the learned Reference Court has awarded compensation of Rs.1,99,728/- for the land

admeasuring .71 HR out of Survey No.226 of mouza Nara, Tahsil Karanja (G), District Wardha, along with interest and statutory benefits.

2. The facts in brief, leading to filing of this Appeal, may be stated as under :-

As per Notification under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the said Act'), which was published on 12-06-1999 in the official Gazette followed by Declaration under Section 6(2) of the said Act published on 14-09-2000, the land of respondent no.1/claimant was acquired by the Vidarbha Irrigation Development Corporation (for short, 'V.I.D.C.'). The Award came to be passed on 12-12-2001. The Land Acquisition Officer fixed the valuation for .57 HR of land of the claimant @ of Rs.72,000/- per hectare being irrigated land and for .14 HR of land @ of Rs.36,000/- per hectare being dry crop land. The Land Acquisition Officer has also granted Rs. 1,37,093/- towards valuation of the trees.

3. Being dissatisfied with the Award of the Land Acquisition Officer, the claimant preferred a Reference proceeding under Section 18 of the said Act thereby, claiming enhanced amount of compensation of Rs.2,50,000/- per hectare and Rs.3,500/- per tree for 163 Orange trees, Rs. 13,500/- towards one Mango tree, Rs. 15,000/- for two Moha trees and Rs. 91,800/- towards 490 teak-wood trees.

4. The respondent-VIDC as well as the State have filed their separate written statements, resisting the claim of the claimant/respondent no.1 herein and submitted that the Land Acquisition Officer has passed the Award after due compliance and following the procedure of law and after verifying the position of land and comparing the prevailing market rates of land in the said vicinity and also on going through the valuation of the ready reckoner and the sale instances prevailing at the relevant time of that area. The learned trial Court framed necessary issues and recorded evidence as adduced by the parties.

5. The claimant-Madhav Dhole examined himself at Exhibit-21. He also examined expert witness i.e. the valuer by name Shri Sharad Bajirao Umale at Exhibit-30 and Shri Balkrushana Namdeo Patil at Exhibit-31. The respondent/State examined the Land Acquisition Officer at Exhibit-40. On the basis of oral and documentary evidence on record, the learned Reference Court partly allowed the reference and adjudicated the market value at Rs.1,99,728/- for the land alongwith trees standing thereon, admeasuring 0.71 HR in Survey No.226, mouza Nara, Tahsil Karanja (G), District Wardha, along with interest and statutory benefits. This judgment and award of the Reference Court passed in Land Acquisition Case No.122/2004, on 11-04-2012, is challenged in this appeal by the appellant-VIDC.

6. I have heard learned Advocate Shri J.J. Chandurkar for the appellant, Mrs. Wasu (Dhoble), learned Advocate for the claimant/respondent no.1 and Ms Jaipurkar, learned AGP for respondent nos. 2, 3 and 4.

7. The learned Counsel for the appellant Shri J.J. Chandurkar, submitted that the adjudication of the market value for the subject land in the impugned judgment is based on the adjudication in Land Acquisition Case No.343/2005, which is at Exhibit 48. In paragraph 20 of the impugned judgment, the learned Reference Court has observed that as Survey No.208 in Land Acquisition Case No.343 /2005 came to be acquired under the same Notification issued under Section 4 of the said Act and the Reference Court in Land Acquisition Case No.343/2005 has adjudicated the amount of compensation @ of Rs.1,32,000/-per hectare for dry crop land. The subject land in the present case includes dry crop land as well as irrigated land, the Reference Court has granted doubled the amount of compensation which is fixed for the dry crop land which comes to Rs.2,64,000/- per hectare. The learned Reference Court also relied on the judgment in Land Acquisition Case No.209/2005 for fixing the valuation of irrigated land @ of Rs.2,64,000/-.

8. The learned Counsel appearing on behalf of the claimant Mrs. Varsha Wasu (Dhoble), states that the appellant- VIDC has settled the matter in front of the National Lok-Adalat held on 17-03-2019 and the VIDC has withdrawn First Appeal No. 949/2013, by which the judgment and award in Land Acquisition Case No.343/2005 was challenged. Learned Counsel Shri Chandurkar for the appellant, does not dispute this fact. The photocopy of the said order passed in National Lok-Adalat dated 17-03-2019 is placed on record. Considering the aforesaid submission, as far as valuation for the land is concerned, the judgment and award in Land Acquisition Case No.343/2005 reached finality and on the basis of adjudication in Land Acquisition Case No.343/2005, the valuation of the subject land, in the present case, has been considered by the Reference Court. Therefore, with regard to valuation of the land, no interference is warranted. However, learned Counsel Shri Chandurkar for the appellant, submitted that in the absence of evidence with regard to 490 teak-wood trees, the learned Reference Court ought not to have granted compensation of Rs.43,368/- to the claimant.

9. Learned Counsel for the appellant read out the cross examination of Shri Balkrushana Namdeo Patil, the expert witness no.3, below Exhibit-31 and submitted that the said witness has admitted in his cross examination that he has not counted the number

of trees and therefore according to the learned Counsel, the compensation/valuation for the 490 teak-wood trees has been granted in the absence of any substantive evidence of existence of those trees. I do not find substance in the contention of learned counsel for the appellant. A perusal of the copy of Award dated 12-12-2001 at Exhibit-22 would indicate existence of 193 Orange trees, one Mango tree, two Moha trees and 490 teak-wood trees standing on the subject land at the time of issuance of Section 4 Notification and subject land Survey No. 226 is shown as perennial irrigated land. The Land Acquisition Officer has also considered the Joint Measurement Report in his Award with regard to number of trees standing on the subject land at the relevant time. So, there is no dispute with regard to existence of the aforesaid trees on the subject land, at the relevant time.

10. Now with regard to valuation of those trees, the learned Reference Court in paragraph 26 has observed that the expert witness has valued compensation of Rs. 91,800/- for teak-wood trees and after deducting therefrom Rs.48,510/- towards expenses for planting teak saplings, the amount comes to Rs.43,368/-. The learned Reference Court added Rs.15,000/- for Moha trees and granted total compensation of Rs.58,368/-. The Land Acquisition Officer had already granted Rs.1,37,093/-towards Orange trees and Mango tree. Considering the amount of valuation, as has been done by the Land

Acquisition Officer towards 163 Orange trees and one Mango tree i.e. Rs 1,37,093/-, in the opinion of this Court, the valuation of Rs.58,368/- for 490 teak-wood trees and two Moha trees does not found to be exaggerated warranting interference.

11. The impugned judgment indicate that the learned Reference Court has considered the evidence of the expert witness and the contents of the Award and after deducting expenses towards plantation of teak-wood trees, reasonable amount of compensation towards teak-wood trees and Moha trees has been granted. Therefore, no interference is warranted in the impugned judgment and award dated 11-04-2012 passed by the 2nd Joint Civil Judge Senior Division, Wardha in Land Acquisition Case No.122/2004. Hence, the Appeal being devoid of merits, needs to be dismissed and the same is accordingly dismissed with no order as to costs.

12. The claimant/respondent no.1 is permitted to withdraw the balance amount of compensation which has been deposited by the appellant-VI.D.C. with the Registry of this Court with accrued interest thereon.

13. First Appeal stands disposed of.

JUDGE