

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

FIRST APPEAL NO. 587 OF 2019

WITH

CIVIL APPLICATION NO. 4877 OF 2020

Basappa s/o Huychappa Aurade
(Died) through legal representatives

1. Kamlbai w/o Basappa Aurade
Age : 35 years, occ : agri.,
2. Shivanand s/o Basappa Aurade
Age : 12 years, minor Under
Guardianship of mother
Kamlbai Basappa Aurade
Both r/o Marajwadi, Tal. Mukhed,
District Nanded.

Appellants

Versus

1. The State of Maharashtra through
District Collector, Nanded.
2. The Executive Engineer,
Vishnupuri Prakalp, Division No.1,
Nanded, now the Executive Engineer,
Lendi Project, Deglur, Dist. Nanded.
3. Special Land Acquisition Officer,
M.I.W. Nanded

Respondents

...

Mr. G.N. Chincholkar, Advocate for the appellants.
Mr. S.N. Kendre, A.G.P. for respondent – State.
Mr. Ram Deshpande, Advocate for respondent No.2.

...

CORAM : SANDIPKUMAR C. MORE, J.

Judgment Reserved on : 16.11.2022.
Judgment pronounced on : 09.12.2022.

Judgment:

1. The appellants, who are the original claimants in L.A.R. No. 315/2007, have challenged the judgment and award dated 24.01.2017 passed by learned Civil Judge (Senior Division), Link Court, Mukhed, District Nanded (hereinafter referred to as the "Reference Court") in the aforesaid L.A.R. for enhancement of the amount of compensation.

2. It is not in dispute that the appellants - claimants are the owners of land Survey No.29/1/1, totally admeasuring 1 Hectare 67 Aar. Further, there is also no dispute that there were two Mango trees, two Ber trees, one Tamarind tree and one Jambool tree in the said land. Moreover, it is also not in dispute that there was one well and loose stone wall of 700 ft. in the said land which was situated at village Marajwadi, Taluka Mukhed, District Nanded. According to the appellants - claimants, the said land was acquired for the submergence area of Lendi Major Project. Special Land Acquisition Officer (S.L.A.O.), M.I.W., Nanded under his award dated 25.10.2004, granted very meager compensation at the rate of Rs. 46,991/- per Hectare for Jirayat (dry) land and Rs. 74,090/- per Hectare for seasonally irrigated land. Further, on perusal of the impugned award, it

appears that the learned Reference Court partly allowed the said Reference and enhanced compensation of 38,838/- in respect of the suit land alongwith the trees. Since the learned Reference Court failed to grant compensation as per the expectations of the appellants and as claimed by them in the Reference Court, they are before this Court.

3. During the course of argument, learned Counsel for the appellants as well as learned A.G.P. relied on the judgment of this Court in First Appeal No. 3133 of 2009 and other connected matters, passed on 16th January 2019 and submitted that this appeal also can be disposed of in view of the aforesaid judgment wherein, the rate of Rs. 1,25,000/- per Hectare for dry land and Rs. 1,87,500/- per Hectare for semi-irrigated land in respect of the lands in the aforesaid project, was granted. Learned Counsel for the appellants, after having in agreement with the aforesaid rate, further argued that though the aforesaid rates are agreed by the appellants, but still they are claiming additional compensation for the well and stony wall to the tune of Rs. 2,68,545/- and for the aforesaid trees, to the tune of Rs. 1,77,775/-. The learned A.G.P. and the learned Counsel for the appellants also pointed out that 53 R land out of the suit

land was dry land and 1 Hectare 14 Aar land was semi-irrigated land. In view of the consensus arrived between the appellants and the Acquiring Body, the rate of Rs. 1,25,000/- per Hectare in case of dry land admeasuring 53 R and the rate of Rs. 1,87,500/- per Hectare in respect of semi-irrigated land admeasuring 1 Hectare 14 Aar are accepted.

4. So far as the additional compensation in respect of the well, stony wall and the trees is concerned, the learned Counsel for the appellants submits that though there was specific evidence led and report of Valuer was also placed on record in respect of the valuation of the aforesaid well and stony wall as well as the trees, the learned Reference Court definitely erred in not granting any compensation to that effect. He relied on the following judgments :

(i) Rajesh Valel Puthuvalli vs Inland Waterways Authority of India and another, 2014 AIR SCW 4215

(ii) Bhupendra Ramdhan Pawar vs Vidarbha Irrigation Development Corporation, Nagpur 2021 AIR (SC) 4393

5. On the contrary, learned A.G.P. strongly opposed the submission in respect of the additional compensation and submits that the learned Reference Court in the judgment itself has made it clear that the enhancement awarded by it was inclusive of the compensation in respect of the trees. He

further submits that since the rate in respect of semi-irrigated land is agreed to be given to the appellants – claimants for the major part of the suit land, there cannot be separate compensation for the well and stony wall which have raised the status of respective land being semi-irrigated land.

6. With the assistance of rival Counsel, I have gone through the entire record and proceeding of L.A..R. No. 315/2007 and also the judgment impugned.

7. The rates in respect of the land as per the earlier judgment of this Court as referred above, are agreed by the parties, but the appellants – claimants are seeking additional compensation in respect of well, stony wall and the trees as mentioned above. Admittedly, on going through the record and proceedings, it is evident that the appellants – claimants had led specific evidence of concerned Valuer in respect of valuation of trees as mentioned above and it was in the tune of Rs.1,17,775/-. However, on going through the observation of the learned Reference Court in para-22 of the impugned judgment, it is clearly evident that while enhancing the compensation by 30% of the compensation, which S.L.A.O. had awarded, the valuation of the trees was included therein. Further, the existence of well and stony wall is not disputed.

The major portion of the land under acquisition is taken as semi irrigated for determination of enhanced compensation. Therefore, it means that for such improvement of the quality of said land, the well and stony wall are included therein, and therefore, said area is getting higher rate than the rate determined for dry land.

8. In the case of *Rajesh Valel Puthuvalil vs Inland Waterways Authority of India* (Supra) it has been observed that if the valuation report is available on record and there is no rebuttal evidence adduced by the respondent in so far as valuation of the building is concerned, the High Court committed error in resorting to guess estimate for reduction of value of building. In short, it was observed that the High Court should have considered the valuation report instead of some guess work. In the second judgment relied upon by the learned Counsel for the appellants, in the case of *Bhupendra Ramdhan Pawar vs Vidarbha Irrigation Development Corporation, Nagpur* (supra), it has been observed that where the land value has been determined with reference to the sales statistics, the trees will have to be valued separately. However, though there was valuation report in respect of the trees on record, but the S.L.A.O. and the learned Reference

Court have already considered the existence of trees while determining the amount of compensation. Moreover, since the major portion of the land under acquisition is getting higher rate of the semi-irrigated land, the well for changing it's nature from dry land to semi-irrigated land, need not to be valued separately.

9. Considering the above discussion, I do not find any substance in the submission of the learned Counsel for the appellants – claimants for getting additional compensation in respect of well, stony wall and trees. Resultantly, the following order is passed

ORDER

- (i) The appeal is partly allowed.
- (ii) The market value of the suit land in the present appeal is determined at the rate of Rs. 1,25,000/- per Hectare for dry land i.e. part of 53 R of the suit land and Rs. 1,87,500/- per Hectare for semi-irrigated land i.e. part of the suit land admeasuring 1 Hectare 14 R.
- (iii) The appellants are accordingly held entitled for the enhancement in the amount of compensation as above.

- (iv) The appellants are also entitled for statutory benefits as are available under the provisions of the Land Acquisition Act, on the enhanced compensation.
- (v) The appellants are also entitled for the interest under Sections 28 and 34 of the Act, on the enhanced amount of compensation from the date of passing of award under Section 11 of the Act i.e. 25.10.2004.
- (vi) The claim of the appellants in respect of additional compensation regarding well, stony wall and trees, is rejected.
- (vii) The Acquiring Body shall deposit the amount of enhanced compensation alongwith interest as awarded, within three months from the date of this order.
- (viii) The award be modified accordingly.
- (ix) The appeal and pending civil application stand disposed of accordingly.

(SANDIPKUMAR C. MORE, J.)