

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

FIRST APPEAL NO. 939/2017 ALONGWITH CROSS OBJECTION NO.23/2018

Executive Engineer, Lower Wardha Project, Wardha.

APPELLANT

.....VERSUS.....

1. Shantabai wd/o Dadaraoji Kale,
Deceased through Legal Heir Amar Sharadrao
Kale, aged 40 years, Occ. Agriculturist,
R/o Arvi, Tah. Arvi, Dist. Wardha.

2. State of Maharashtra,
Through Collector, Wardha.

3. Special Land Acquisition Officer, M.I.W. Wardha.

RESPONDENTS

Shri Abhijit Parihar, counsel for the appellant.

Shri Akshay A. Naik, counsel with Shri C.R. Najbale, counsel for the respondent
no.1/Cross Objector.

Ms H.N. Jaipurkar, Assistant Government Pleader for the respondent nos.2
and 3.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : 17TH MARCH, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

In this appeal filed under Section 54 of the Land Acquisition Act, 1894 (for short, 'the said Act') the judgment dated 08.12.2015 in Land Acquisition Case No.96 of 2008 is under challenge.

2. Land admeasuring 5 Hectares 67 R from Survey No.460/1 of Mouza Wathoda, Tahsil Arvi, District Wardha was the subject matter of acquisition for submergence under the Lower Wardha Project. Notification under Section 4(1) of the said Act was published on 03.02.1999. In the said land, there was a Well with about 1200 Orange

trees, 2 Jambhul trees, 6 Lime trees, 10 Bor trees, 6 Sweet Orange trees, 1000 Teak trees, 20 Subabhul trees, 1 Mango tree and one Moha tree. There was also a pipeline in the said field. The Land Acquisition Officer passed an award and granted an amount of Rs.7,23,492/- towards the value of the land. The claimant not being satisfied with award as passed, filed reference proceedings under Section 18 of the said Act. The Reference Court by its judgment dated 08.12.2015 enhanced the amount granted for the land to Rs.2,20,000/- per Hectare. For 1200 Orange trees, an amount of Rs.4,885.65 per Orange tree was granted. The compensation was also partially enhanced for other fruit bearing trees and forest trees. The reference was accordingly partly allowed and the enhanced compensation was directed to be paid alongwith statutory interest. The Acquiring Body being aggrieved by the enhancement in the amount of compensation has preferred First Appeal No.939 of 2017. The claimant has sought enhancement in the compensation for the Orange trees and has filed Cross Objection No.23 of 2018.

3. Shri Abhijit Parihar, learned counsel for the appellant submitted that the Reference Court enhanced the amount of compensation without there being sufficient evidence on its record to support the same. Insofar as the compensation granted for the land was concerned, it was clear that the Land Acquisition Officer after considering

various sale instances on his record had rightly awarded compensation for the same. As regards the fruit bearing trees the Reference Court rightly discarded the report of the Valuer which was at Exhibit 39. Similarly, the enhancement granted for the fruit bearing trees was also without supporting evidence in that regard. It was thus submitted that in absence of any substantial evidence to sustain the enhancement in the market value of the land, the impugned judgment was liable to be set aside and the award as passed by the Land Acquisition Officer ought to be restored.

4. Shri Akshay Naik, learned counsel for the cross-objector opposed the aforesaid submissions. He submitted that in Land Acquisition Case No.78 of 2008 which arose from the same notification as the present one, this Court in First Appeal No.266 of 2017 alongwith Cross Objection No.71 of 2018 decided on 08.08.2019 was pleased to grant an amount of Rs.2,48,000/- per Hectare as market value for land from the same village. This was more than what was granted by the Reference Court in the present proceedings. Despite that, the claimant had not sought any enhancement in the rate of the land. He further submitted that in First Appeal No.313 of 2015 decided on 05.02.2019 which arose from Land Acquisition Case No.55 of 2008, the Orange trees were valued at Rs.6,311/- per Orange tree. Similarly in Land Acquisition Case No.81 of 2008 the same rate was granted by the Reference Court for

the Orange trees and the Acquiring Body had not preferred any appeal against that adjudication. Similar was the case in First Appeal No.266 of 2017 alongwith Cross Objection No.71 of 2018 decided on 08.08.2019 and First Appeal No.1176 of 2016 alongwith Cross Objection No.49 of 2021 decided on 02.09.2021. He therefore submitted that the rate of Rs.6,311/- per Orange tree has been consistently granted for acquisition from the same village and under the same notification. It was thus submitted that the compensation for the land as awarded be maintained while the compensation for the Orange trees be enhanced.

5. In the light of aforesaid submissions, the following point arises for determination:-

“Whether the award passed by the Reference Court is liable to be modified in the light of adjudication of various proceedings arising from the same village and under the notification dated 03.02.1999?

6. We have heard the learned counsel for the parties and with their assistance we have also perused the records of the case. The land acquired in the present acquisition proceedings admeasures 5 Hectare 67 R. The Reference Court recorded a finding that land bearing Survey No.460 was perennially irrigated and in view of the adjudication in Land Acquisition Case No.55 of 2008 which pertained to semi-irrigated land

wherein amount of Rs.1,50,000/- per Hectare was granted, for land from Survey No.460/1 amount of Rs.2,20,000/- per Hectare was granted. It is further not in dispute that in First Appeal No.266 of 2017 alongwith Cross Objection No.71 of 2018 decided on 08.08.2019 an amount of Rs.2,48,000/- per Hectare was granted for the land from the same village as acquired under the same notification. Since the aforesaid amount has been granted by this Court it would not be justified to reduce the market value for the acquired land from what was granted by the Reference Court. As stated above, the Reference Court had granted compensation of Rs.2,20,000/- per Hectare for the present land and hence in absence of any prayer for enhancement in the cross objection, this rate for the land is liable to be maintained.

7. Coming to the compensation for the Orange trees, it is again undisputed that in various other proceedings being Land Acquisition Case No.81 of 2008 as well as First Appeal No.313 of 2015, First Appeal No.266 of 2017 alongwith Cross Objection No.71 of 2018 and First Appeal No.1176 of 2016 alongwith Cross Objection No.49 of 2021, the Orange trees in the same village have been valued at Rs.6,311/- per Orange tree. In the present case, the Reference Court had granted an amount of Rs.4,885.65 Ps. for each Orange tree. This rate would have to be thus enhanced to Rs.6,311/- per Orange tree.

8. As regards the compensation for the other fruit bearing trees is concerned, we do not find there is much scope to reduce the compensation granted for the same in absence of any supporting evidence in that regard. The Reference Court had granted such compensation based on the valuation report prepared by the Government Valuer at Exhibit 53. The report submitted by the Valuer appointed by the Claimant at Exhibit 34 has not been accepted by the Reference Court. We thus find that the compensation for other fruit bearing trees is not liable to be reduced in the present proceedings. Same is the position with regard to compensation for the pipeline and the structure of the Temple. The point as framed is answered accordingly.

9. In the light of aforesaid discussion, the following order is passed:-

The judgment of the Reference Court dated 08.12.2015 in Land Acquisition Case No.96 of 2008 is partly modified as under:

It is held that the claimant is entitled to an amount of Rs.6,311/- per Orange tree which are 1200 in number. Rest of the award as passed by the Reference Court stands confirmed.

10. The First Appeal as well as Cross Objection are disposed of in aforesaid terms. Pending civil application also stands disposed of. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

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