

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

MISC. CIVIL APPLICATION (MCA) NO.416 OF 2020
WITH
CIVIL APPLICATION (CAO) NO.737 OF 2020
IN
FIRST APPEAL NO.1095 OF 2013 (D)

Hitesh Deoraj Gosar, Digras, Dist. Yavatmal and ors.

-vs-

Vidarbha Irrigation Development Corporation, Thr. Its Executive Engineer, Madhyam
Prakalp/Project Station (Kohla Project), Yavatmal, Dist. Yavatmal and ors.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri M. G. Bhangde, Senior Advocate with Shri Raheel Mirza,
Advocate for applicants.

Shri A. Parihar, Advocate for respondent No.1.

Shri A. M. Kadukar, Assistant Government Pleader for respondent
Nos.2 and 3.

CORAM : A. S. CHANDURKAR AND G. A. SANAP, JJ.

Arguments were heard on : December 21, 2021

Order is pronounced on : January 14, 2022

Order : (Per A. S. Chandurkar, J.)

The applicants seek review of the common judgment dated 13/10/2020 delivered in First Appeal No.1095/2013 alongwith connected appeals. By the said judgment the prayer for enhancement in the amount of compensation as made by the applicants-claimants was turned down by modifying the judgment of the reference Court dated 17/04/2012.

2. While deciding First Appeal No.1095/2013 along with connected appeals it was found by the Court that though the applicants had claimed that they had purchased the acquired land on 07/09/2004 at the rate of

Rs.12,54,658/- per hectare, the said sale-deed had not been produced before the reference Court or before this Court in support of the prayer for enhancement in the amount of compensation. After referring to the decisions in *The Dollar company, Madras vs. Collector of Madras (1975) 2 SCC 730* and *Pehlad Ram and ors. vs. Haryana Urban Development Authority and ors. (2014) 14 SCC 778* it was observed by the Court that in absence of any explanation or justification for non-production of the sale-deed of the acquired land by the applicants despite the fact that it was the applicants who had themselves purchased the said land and though being the best piece of evidence in the hands of the claimants it appeared that the sale-deed had been deliberately not brought on record. The amount of fair compensation was thereafter determined on the basis of the agreements at Exhibits-43 to 46 which pertained to small plots of land.

3. Shri M. G. Bhangde, learned Senior Advocate for the applicants by referring to Civil Application No.737/2020 filed under provisions of Order XLI Rule 27 of the Code of Civil Procedure, 1908 (for short, the Code) submitted that the applicants intended to place on record the sale-deed dated 07/09/2004 by which the acquired land was purchased by the applicants alongwith order-sheets of the Land Acquisition Case and certified copies of other documents to indicate conversion of the land to “Residential Zone”. Similarly a copy of the judgment in S.C.S.

No.61/2004 was also being sought to be placed on record. It was submitted that the sale-deed dated 07/09/2004 had not been placed on record before the reference Court or this Court for the reason that the said sale-deed had been referred to by the Land Acquisition Officer while passing the award. Despite specific averments in paragraphs 4(d) and 4(e) of the reference application filed under Section 18 of the Land Acquisition Act, 1894 (for short, the Act of 1894), the same had not been denied by any of the non-applicants. Since the execution of the sale-deed was not disputed, it was not produced on record by the applicants. However on noticing that the Court has found that the said sale-deed appeared to have been deliberately kept away from the Court an attempt to place it on record now was being made by the applicants. This was after realising that it was necessary to place the aforesaid documents on record. According to the applicants this was necessary to enable the Court to pronounce satisfactory judgment in the proceedings. Placing reliance on the decision in *Reliance Industries Ltd. vs. Pravinbhai Jasbhai Patel and ors. (1997) 7 SCC 300* it was submitted that even while exercising review jurisdiction the Court had the power to permit additional evidence to be brought on record. It was further submitted that the counsel representing the applicants before the Reference Court was under a mistaken conception that non-production of the said documents would not affect the rights of the applicants. Hence, to prevent miscarriage of justice

and in view of such mistaken conception, the Court may permit the aforesaid documents to be placed on record as the same would assist the Court in pronouncing the judgment satisfactorily. Reference was also made to the decision in *Rajender Singh vs. Lt. Governor, Andaman and Nicobar Islands and ors. (2005) 13 SCC 289* in that regard. It was thus submitted that the civil application be allowed and the applicants be permitted to place on record and rely upon the documents referred to therein.

In support of the review application it was submitted that failure on the part of the applicants in placing the sale-deed dated 07/09/2004 on record had heavily weighed with the Court while determining the amount of compensation payable to the applicants towards acquisition of their land. Attention was invited to the rate at which the land was agreed to be sold in the year 2001 pursuant to which the suit for specific performance had been filed. The rate of the land mentioned in the sale-deed reflected the value as obtaining in the year 2001 while the notification under Section 4 of the Act of 1894 was dated 15/06/2006. The amount of compensation determined by the Court in the aforesaid context was therefore on a lower side when compared to the rate at which the acquired land was purchased by the applicants. It was further submitted that the deduction as directed to the extent of 65% was on a higher side. The normal rule of 1/3rd deduction ought to have been followed and if the

acquiring body intended to urge that higher deduction was necessary, the burden was on the said party to justify as to why higher deduction was necessary. Reliance in that regard was placed on the decision in *Kasturi and ors. vs. State of Haryana (2003) 1 SCC 354* and *M.S.N. Nadaf (since Dead Thr. LRs) and ors. vs. Special Land Acquisition Officer (2004) 13 SCC 75* to urge that reasonable deduction of 33% ought to have been directed and by departing from that rule in the absence of any other material, there was an error apparent on the face of record warranting exercise of review jurisdiction. There was no evidence led by the acquiring body to justify higher deduction. It was thus submitted that the judgment dated 13/10/2020 be accordingly reviewed. Reference was also made to the decision in *Yashwant Sinha and ors. vs. Central Bureau of Investigation Thr. Its Director and anr. (2020) 2 SCC 338* to indicate the scope of review.

4. Shri A. Parihar, learned counsel for the acquiring body opposed aforesaid submissions. As regards the prayer for permission to lead additional evidence was concerned, it was submitted that the requirements of the provisions of Order XLI Rule 27 of the Code were not satisfied by the applicants. There was no justifiable reason for non-production of the relevant documents either before the reference Court or before this Court in the appeal. All documents were within the knowledge of the applicants and were available with them. Referring to the provisions of Order XLI

Rule 27 of the Code and especially sub-rule (1)(aa) thereof it was submitted that the ingredients therein were not satisfied by the applicants. By failing to produce the aforesaid documents before the reference Court, the acquiring body was deprived of the right to cross-examine the applicants on the said documents. There was no misconception of fact as urged as these documents could have been placed on record in the appeal. The learned counsel referred to the decisions in *State of Karnataka and anr. vs. K. C. Subramanya and ors. (2014) 13 SCC 468* and *Sopanrao and anr. vs. Syed Mehmood and ors. (2019) 7 SCC 76* to substantiate his contention.

As regards the prayer for review, it was submitted that no ground whatsoever was made out as required by provisions of Order XLVII Rule 1(a) of the Code. The grounds urged would result in re-hearing of the appeal and there was no error apparent on the face of record to exercise review jurisdiction. The learned counsel referred to the decision in *Sow Chandra Kante and anr. vs. Sheikh Habib (1975) 1 SCC 674* in that regard. It was submitted that the review application was liable to be rejected.

5. We have heard the learned counsel for the parties and on giving due consideration to their submissions, we find no merit in the review application as well as the application seeking permission to lead additional evidence. As stated above, it is the case of the applicants that they had purchased the acquired land on 07/09/2004 and had referred to the same

in their statement of claim. Reference to the same was also made in the reply given by the applicants to the notice issued under Section 9 of the Act of 1894. It was found while deciding the appeals that the Land Acquisition Officer did not consider this sale-deed since the valuation of the land shown therein was, according to the Land Acquisition Officer, on a higher side. Thus, if that was the reason put forth by the Land Acquisition Officer for discarding the valuation in that sale-deed, it was incumbent upon the applicants to have produced their own sale-deed before the reference Court in support of the prayer for enhancement in the amount of compensation. Such attempt could have been made at least before this Court in the appeal filed under Section 54 of the Act of 1894 read with Section 96 of the Code. The same having not been done, it was observed that the sale-deed perhaps deliberately kept away from the Court. By moving an application under provisions of Order XLI Rule 27 of the Code the said sale-deed along with other documents are now sought to be placed on record. The applicants have not attempted to contend that despite exercise of due diligence such additional evidence could not be brought on record either before the reference Court or in the first appeal. The applicants admit that on realising the need to bring the said documents on record now so as to enable the Court to pronounce judgment as contemplated by provisions of Order XLI Rule 27 (1)(b) of the Code, such permission be granted.

We find that it is only if the appellate Court finds it necessary that it requires any document to be produced to enable it to pronounce judgment satisfactorily that such document could be directed to be so produced by a party. It is not for the applicants to seek to produce such documents on the premise that same would enable the Court to pronounce judgment in the proceedings. Reference in this regard can be made to the decision in *K. Venkatramiah vs. Seetharama Reddy, AIR 1963 SC 1526*. In our view if the documents referred to above despite being within the knowledge and in the custody of the applicants were not produced by them either before reference Court or before this Court for reasons best known to them such lacuna cannot be permitted to be filled in by invoking the provisions of Order XLI Rule 27 of the Code in review jurisdiction. We therefore find that since the applicants have failed to satisfy the parameters as laid down in Order XLI Rule 27 of the Code for seeking permission to produce additional evidence, the prayer made in the civil application cannot be granted. Civil Application No.737/2020 is therefore rejected.

6. As regards the contention that there was an error apparent on the face of record in determining the amount of fair compensation for the acquired land by directing deduction at a higher rate, we are of the view that re-examination of the aforesaid aspect would not be permissible in

exercise of review jurisdiction. The same would fall within the province of an appellate Court. This is after considering the ratio of the decisions relied upon by the applicants. Since the amount of compensation has been determined after adopting a particular course and by giving reasons therefor which according to the applicants may be erroneous, the same cannot be corrected in exercise of review jurisdiction in the absence of such case being made out under Order XVII Rule 1 of the Code. We are therefore satisfied that there is no case made out to review the judgment dated 13/10/2020 in the aforesaid first appeals.

Misc. Civil Application No.416/2020 is accordingly rejected.

No costs.

(G. A. Sanap, J.)

(A. S. Chandurkar, J.)

Asmita

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ADWAIT BHANDAKKAR
Signing Date:14.01.2022
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