

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

FIRST APPEAL NO. 1154 OF 2015

WITH

FIRST APPEAL NO. 1149 OF 2015

Executive Engineer
Minor Irrigation Division,
Washim, Dist. Washim ...Appellant

Versus

- 1] Baban Ganpat Jumbade,
Aged 48 Yrs, Occ. Agriculturist,
R/o. Kurha, Tq. Risod,
Dist. Washim
- 2] The State of Maharashtra,
Through Collector, Washim
- 3] The Special Land Acquisition Officer,
Washim for Mandwa Dam,
Tq. Risod, Dist. Washim ...Respondents

WITH

CIVIL APPLICATION NO. 809 OF 2016

WITH

CIVIL APPLICATION NO. 1464 OF 2016

IN

FIRST APPEAL NO. 1154 OF 2015

Executive Engineer,
Minor Irrigation Division, Washim,
Dist. Washim ...Appellant

Versus

- 1] Baban Ganpat Jumde,
Aged about 48 years, Occ. Agriculturist
R/o. Kurha, Tq. Risod, Dist. Washim
 - 2] The State of Maharashtra,
Through Collector, Washim
 - 3] The Special Land Acquisition Officer,
Washim for Mandwa Dam,
Tah. Risod, Dist. Washim
- ...Respondents

- 1] Ramesh S/o. Baban Jumde
Aged about 25 years, Occ. Labour
- 2] Gajanan Baban Jumde,
Aged about 21 years, Occ. Labourer
- 3] Ku. Sapna Baban Jumde,
aged about 18 years
- 4] Sau.Gokarnabai Baban Jumde,
aged about 42 years, Occ. Agriculturist

All R/o. Kurha, Po. Bhar Jahagir,
Tq. Risod, Dist. Washim

...Applicants/
Intervenors

.....

Ms. Ujjwala Arun Patil for the Appellants in both Appeals.
Mr. Vijay K. Paliwal for Respondent No.1.
Shri. A.M. Kadukar, AGP for Respondent Nos. 2 and 3.
Mr. S.D.Chande for the Intervenors.

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CORAM : V.G.BISHT, J.
RESERVED ON : 12TH APRIL, 2022
PRONOUNCED ON : 23RD JUNE, 2022

JUDGMENT

1. In these Appeals filed under Section 54 of the Land Acquisition Act, 1894 (for short, “the said Act”), the judgments and awards dated 9th March, 2010 and 6th April, 2010 passed by learned Civil Judge (Senior Division), Washim in Land Acquisition Nos. 28 of 2003 and 26 of 2003 respectively are under challenge.

2. These Appeals are disposed of by a common judgment as the appellants and the respondents are same and moreover, the subject lands are from the same village.

FIRST APPEAL NO. 1154 OF 2015

3. Brief facts are as under :

(a) The land bearing Gat No. 56/5 area 1 H 62 R situated at village -Kurha, Taluka -Risod, District -Washim was the subject land of acquisition for the construction of Mandwa Dam. The notification under Section 4 (1) of the

said Act was published on 17th May, 1998.

(b) The Land Acquisition Officer passed an Award on 16th July, 2001 and fixed the market price of the acquired land at the rate of Rs. 34,992/- for the said acquired land admeasuring 1H 62R. However, at the time of acquisition, the Land Acquisition Officer did not consider the standing timber trees and did not grant any benefits.

(c) The claimant not being satisfied with the Award as passed, filed proceedings under Section 18 of the said Act. The Reference Court by its Judgment and Award dated 9th March, 2010 allowed the claim and enhanced the compensation to the tune of Rs. 7,56,900/- alongwith interest @ 15% p.a. from the date of decree till realization of the amount.

(d) The Acquiring Body being aggrieved by the enhancement in the amount of compensation has filed the present Appeal.

FIRST APPEAL NO. 1149 OF 2015

4. Brief facts are as under :

(a) The land bearing Gat No. 56/2-A area 1 H 16 R situated at village -Kurha, Taluka -Risod, District -Washim was the subject land of acquisition for the construction of Mandwa Dam. The notification under Section 4 (1) of the said Act was published on 17th May, 1998.

(b) The Land Acquisition Officer passed an Award on 16th July, 2001 and fixed the market price of the acquired land at the rate of Rs. 52,584/- for the said acquired land admeasuring 1H 16R. However, at the time of acquisition, the Land Acquisition Officer did not consider the standing timber trees and did not grant any benefits.

(c) The claimant not being satisfied with the Award as passed, filed proceedings under Section 18 of the said Act. The Reference Court by its Judgment and award dated 6th April 2010 allowed the claim and enhanced the compensation to the tune of Rs. 5,82,751/- alongwith

interest @ 15% p.a.from the date of decree till realization of the amount.

(d) The Acquiring Body being aggrieved by the enhancement in the amount of compensation has filed the present Appeal.

5. Ms.Patil, learned Counsel for the appellant, submits that the learned Reference Court committed serious error of law in enhancing the compensation without there being any evidence on record. According to learned Counsel, the learned Reference Court wrongly relied upon the Award filed by respondent No.1. To substantiate this, learned Counsel invited my attention to paragraph No. 7 of the impugned Judgment and Award challenged in First Appeal No. 1154 of 2015 and impressed upon me that except a copy of the Award, there was nothing before the learned Reference Court and this being so, learned Reference Court was not justified in enhancing the compensation.

6. Learned Counsel further invited my attention to the written statement of appellant and, more particularly, paragraph 5 and would submit that the quality of land was denied by the said appellant and despite that the learned Reference Court failed to take into consideration the said fact. This being so, the enhancement is absolutely not proper, argued learned Counsel.

7. Mr. Paliwal, learned Counsel for respondent No.1, on the other hand, invited my attention to the observations of the learned Reference Court and submitted that the learned Reference Court was justified in enhancing the amount. Having regard to the material on record and there being no merit in the appeal, the same is liable to be dismissed, urged learned Counsel.

8. Mr.Chande, learned Counsel for the intervenors, submits that the intervenors had filed Regular Civil Suit before the Civil Judge (Senior Division), Washim bearing No. 81 of 2011 for partition, permanent injunction and for separate possession in respect of Gat Nos. 56/5 and 56/2-A, which are the subject matter of the present

Appeals. Intervenor Nos. 1 to 3 being sons and daughter of present respondent No.1 and intervenor No.4 being wife are entitled to have 1/5th share each in the said acquired lands. Learned Counsel has also filed a pursis in First Appeal No. 1149 of 2015 stating therein that the learned trial Judge has decreed the said Regular Civil Suit No. 81 of 2011 and has granted 1/5th share each to the legal heirs of Baban Ganpat Jumbade i.e. respondent No.1 herein. The true copy of the said judgment and decree is filed on record, which is not disputed by other side.

9. The intervenors also support the impugned Judgments and Awards passed in the above said Appeals and claim their share of compensation in the light of Judgment and Decree passed in Regular Civil Suit No. 81 of 2011.

10. As far as First Appeal No. 1154 of 2015 is concerned, I have carefully gone through the record and it appears that none of the parties had laid evidence and this fact was also noted by the learned Reference Court in paragraph 7 of the impugned Judgment and Award.

11. It is further seen from the record that respondent No.1 herein had placed reliance in the findings given in L.A.C. No. 35 of 2003 and had requested learned Reference Court to consider the said Award for the purpose of reference in question. It may be noted that the land under reference bearing No. 35 of 2003 was also a land from the same village Kurha from which the subject land i.e. Gat No. 56/5 is. The learned Reference Court found that the lands from the village are of high quality lands and having other facilities. Even the learned APP before the said Reference Court had admitted passing of the Judgment and Award in L.A.C. No. 35 of 2003 and enhancement given therein at the rate of Rs. 75,000/- per hector to jirayat lands. This being so, the learned Counsel for the applicant in the said reference made submission that he had no objection to award compensation at the rate of Rs. 75,000/- per hector. This being an admitted position on record, the learned Reference Court was pleased to enhance the compensation at the rate of Rs. 75,000/- per hector alongwith stipulated interest.

12. In view of this obtaining situation, it is not proper on the part of learned Counsel for the appellant to say that the learned Reference Court had not considered the material on record. I do not find merit in her submission and therefore, the submission is required to be rejected out rightly.

13. In my opinion, the learned Reference Court was justified in enhancing the compensation to the tune of Rs. 7,56,900/- as per the details given in paragraph 10 of the impugned Judgment and Award.

14. Coming to the First Appeal No. 1149 of 2015 and after having gone through the record, I find that respondent No.1 herein has adduced his evidence by way of affidavit (Exhibit 16) and also examined one Sunil Vitthalrao Gulhane (Exhibit 24). On the other hand, the appellant and other did not enter into the witness box and closed their evidence by filing pursis (Exhibit 31).

15. Respondent No.1 herein in his evidence stated that L.A.O. has not awarded compensation as per the market price and at the time of acquisition of the land, the market price was Rs.1 lakh per acre. In support of his evidence, he also placed reliance on sale deeds dated 6th August, 1996 (Exhibit 20) and 5th January, 1996 (Exhibit 21). He further placed reliance upon an Award (Exhibit 17) passed on 16th July, 2001 in L.A.C. No. 26 of 2003. The aforesaid sale deeds came to be executed prior to the notification under Section 4 dated 13th April, 1998. Therefore, those sale deeds were rightly considered by the learned Reference Court.

16. In Sale Deed dated 5th January, 1996 (Exhibit 21), the consideration amount was Rs. 1 lakh, whereas, in Sale Deed dated 6th August, 1996 (Exhibit 20), the consideration amount was Rs. 90,000/-. The learned Reference Court, after going through the Award (Exhibit 17) and having regard to the assessment of the land in the said award and the land in question, came to a conclusion that the acquired land was of a good quality land and this aspect was not considered by the L.A.O.

17. On the basis of oral and documentary evidence and as also keeping in mind the Sale Deeds and the Award, the learned Reference Court came to a conclusion that the valuation of the acquired land would be Rs. 75,000/- per hector and Rs. 1 lakh for irrigated crops land. Accordingly, the learned Reference Court fixed the price of land at the rate of Rs.1 lakh per hector and enhanced the compensation as per details given in paragraph 14 of the impugned Judgment and Award.

18. From the above, it is very much clear that not only the evidence was adduced by respondent No.1 herein but necessary documents viz. Sale Deeds and Award were also relied on. On the other hand, no evidence came to be laid on behalf of the appellant and others. The learned Reference Court, in my view, rightly considered all the necessary oral and documentary evidence in its proper perspective and rightly enhanced the amount of compensation. The findings referred by the learned Reference Court are not required to be disturbed by this Court.

19. For the aforesaid reasons, I pass the following order :

ORDER

(i) First Appeal Nos. 1154 of 2015 and 1149 of 2015 are dismissed;

(ii) Civil Application Nos.809 of 2016 and 1464 of 2016 stand allowed and the original applicant (present respondent No.1 herein) alongwith intervenors shall be entitled to 1/5th share each in the compensation so enhanced by learned Civil Judge (Senior Division), Washim alongwith interest @ 15% p.a. from the date of decree till realization of the amount;

(iii) No order as to costs.

(V.G.BISHT, J.)

VITHAL
MAROTRAO
CHOULWAR

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