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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

FIRST APPEAL NO.34 OF 2022

Shri Ashok S/o Sakharam Shejul,
Aged about ____ years, Occu.: Agriculturist,
R/o Village – Gundha, Tahsil – Lonar,
and District – Buldana.

APPELLANT/
CLAIMANT
ON RA

// VERSUS //

- 1) State of Maharashtra,
Through Collector, Buldana.
- 2) Special Land Acquisition Officer,
Minor Irrigation work (VIDC)
(Mouza-Gundha, Taluka – Lonara)
Buldana.

RESPONDENTS/
OPPONENT
(On R.A.)

Mr. P. S. Sadawarte, Advocate for the appellant.
Mr. M. A. Kadu, AGP for respondents.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 21/03/2023

ORAL JUDGMENT

1. The present appeal is preferred under Section 54 of the Land Acquisition Act against the Judgment and Award passed by the Civil Judge Senior Division, Buldana in Land Acquisition Case No.150/1992 dated 20.10.2004 by which the Reference Court has awarded the compensation at the rate of Rs.24,000/- per hectare. Present appeal is preferred by the original claimant for enhancement of

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the compensation towards land as well as towards Well.

2. Brief facts which are necessary for the disposal of the appeal are as under.

The claimant/appellant is the owner of land bearing Gat. No.19/2 admeasuring 1 hectare 70 R. and land Gat No.20/1 admeasuring 2 hectare 97 R., Both the lands are acquired by the Government for construction of minor irrigation tank in village Gundha. Notification under Section 4 was published on 03.01.1991 in the Government Gazette and the award was passed on 31.03.1992. As per the contention of the appellant/claimant that, while ascertaining the market value of the acquired land, the Land Acquisition Officer had not considered the valuation made by the panchas and had also not called for the report of the expert and awarded inadequate compensation amount.

3. Being aggrieved and dissatisfied with the same, the claimants has accepted the amount of compensation under protest and preferred the reference bearing No.150/1992. The reference was filed on the ground that the Land Acquisition Officer has not considered the sale instances and awarded the inadequate compensation. He had also not considered that the productivity, fertility of the land and the

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irrigation facility available in the land by determining the amount of compensation. The appellant/claimant has invested huge amount in improving the quality of the land by utilizing manure, fertilizers, laying a pipeline and constructing Well etc. The Land Acquisition Officer ought to have awarded the compensation by taking into consideration all these facts, however he had not considered the same and awarded the inadequate compensation.

4. The notice of the said reference was served on the State. The State has raised strong objection by filing written statement and denied the contention of the appellant/claimant. As per the contention of the State, the Land Acquisition Officer has rightly ascertained the amount of compensation by taking into consideration the fertility, quality and all other relevant factors, and therefore no interference is called for.

5. To substantiate the contention of the claimant/appellant entered into the witness box by adducing the evidence vide Exh.34. He testified that he is the owner of Gat No.19/2 admeasuring 1 hectare 70 R and Gat No.20/1 admeasuring 2 hectare 97 R. situated at village Gundha. The said land was acquired for the purpose of Dam and the Land Acquisition Officer has awarded the compensation at the rate of Rs.16,000/- per hectare which is inadequate. He further deposed that

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the land was having irrigation facility as in both the lands, Wells are constructed having perennial water sources. The land was having black soil and was a fertile land. It was suitable for cultivation and nearer to the village. He also placed reliance on the sale instances to show that the land is fetching more price to the extent of at the rate of Rs.75,000/- per hectare. On the basis of the evidence adduced before the trial Court, the trial Court had come to the conclusion that the claimant is entitled to receive Rs.25,000/- per hectare. Considering the quality and fertility of the land, the Reference Court has also enhanced the compensation towards the Well which is situated in Gat No.19/2.

6. Being aggrieved and dissatisfied with the rate awarded by the Reference Court, present appeal is preferred by the claimant for enhancement of the compensation.

7. Heard learned Advocate Mr. Sadavarte for the claimant. He submitted that the issue involved in the appeal is already covered by the Judgment passed by this Court in First Appeal No.719/2009 along with the connected appeals, wherein this Court has enhanced the compensation amount at the rate of Rs.35,000/- per hectare. He submitted that present appellant is also entitled to receive the compensation by the same date, at the same time, he further submitted

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that the Reference Court has awarded the compensation at discriminatory rates for the Well situated in Gat Nos.20/1 and 19/2. Both Wells are similarly situated, and therefore claimant is entitled to receive the compensation by the same rate.

8. Per contra, learned AGP Mr. Kadu for the State submitted that the Reference Court has awarded the compensation on the basis of evidence adduced before it. There is absolutely no evidence regarding the valuation of Wells whether it was constructed in a stones or Kaccha construction, therefore Reference Court has taken into consideration and enhanced the amount towards the Well, which is situated in Gat No.19/2. There is no evidence to enhance the compensation towards the Well, however he has submitted that the issue involved in the First Appeal No.719/2009 [The Collector, Buldhana and another Vs. Kashinath Rajaram Shejul] along with First Appeal No.700/2010 is covered and claimant/appellant is entitled to receive the compensation by the same rate. Admittedly, the acquiring body for the State has not preferred any appeal against the Judgment and Award passed by the Reference Court.

9. After hearing both the sides, following points arise for my consideration and I answer the same as follows.:

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- (i) Whether the claimant has made out the case for enhancement of the compensation towards the land and Well situated in Gat No.19/2?

10. There is no dispute that the Gat Nos.19/2 and 20/1 owned by the appellant/claimant is acquired by the Government for construction of Minor Irrigation Dam. Notification under Section 4 was published on 03.01.1991. The Special Land Acquisition Officer passed award from 31.03.1992. The Special Land Acquisition Officer granted compensation at the rate of Rs.16,000/- per hectare which was enhanced by the Civil Judge Senior Division, Buldana, by awarding the compensation at the rate of Rs.25,000/- per hectare. The claimant has adduced the evidence by examining himself and reiterated the contentions as raised in the reference petition. He is cross-examined at length and during his cross-examination, it came on record that prior to acquisition of the land, the Land Acquisition Officer visited the acquired land to verify its nature. It further came in the evidence that claimant has not made any written application to Land Acquisition Officer for claiming the price at the enhanced rate. He was cultivating the Kharip crop in Gat No.19/2 and in Gat No.20/1 also he used to cultivate the Kharip crops. The facts that the Wells are situated in both the lands is also came on record. 7/12 extract Exh.35 also shows that Gat Nos.19/2

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and 20/1 both are having Well in the said land. The copy of the Award is at Exh.36 which also shows that in both the lands, Wells are constructed. On perusal of the award, admittedly there is no description regarding the nature of the Well whether it was constructed in the stones or whether it was a Kaccha construction. The claimant has also not adduced any evidence to show that the Wells constructed by him by using the stones or whether the Well was having the Kaccha constructions. There is no evidence regarding the depth, width of the Well. Even there is no evidence, when the said wells were constructed by the claimant. No valuer report is filed on record. However, considering that Wells are situated in both the lands, the reference Court by using the guesswork enhanced the compensation towards the Well situated Gat No.19/2 at the rate of Rs.20,000/- and maintained the compensation in respect of the Well situated in Gat No.20/1. In absence of any valuer's report, claimant is not entitled to receive any enhanced compensation towards the Well. As this Court while allowing the First Appeal No.719/2009 wherein also the lands of the present applicant other Survey numbers are acquired wherein this Court has considered the evidence and awarded the compensation at the rate of Rs.35,000/- per hectare. While enhancing the compensation, this Court has taken into consideration the award and Judgment passed by the Reference Court in Land Acquisition Case Nos.79/1992, 80/1992 and 81/1992

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wherein the lands of the relatives of the claimants were acquired by the same notification.

11. In view of the matter, present appeal deserves to be partly allowed.

12. The acquiring body is directed to pay compensation to the present appellant in this appeal at the rate of Rs.35,000/- per hectare for his acquired lands along with all statutory benefits under Land Acquisition Act.

13. The amount of compensation which is received by the land owner be deducted and balance amount at the rate of 9% for one year, and thereafter 15% till realization of the amount.

14. The appellant is entitled to receive all statutory benefits.

15. The claimant/appellant is not entitled to receive interest for the delayed period i.e. from the date of judgment till 04.01.2021.

16. The prayer of the appellant in respect of the enhancement of the compensation towards Well is rejected.

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17. Appeal is disposed of as no order to costs.

(URMILA JOSHI-PHALKE, J.)

Sarkate./-