

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

FIRST APPEAL NO.1393 OF 2018

1. Vidarbha Irrigation Development Corporation through its Executive Engineer, Bembla Project Division, Yavatmal, Tq. and District Yavatmal
2. The Executive Engineer, Bembla Project Division, Yavatmal, Tq. and District Yavatmal

...APPELLANTS

VERSUS

1. Subhash Ramchandra Sahare, Aged about 55 years, Occupation – Agriculturist, R/o. Kolhi, Tq. Babhulgaon, District Yavatmal
2. The State of Maharashtra, through Collector, Yavatmal Tq. and District Yavatmal
3. Special Land Acquisition Officer, Bembla Project, Yavatmal Tq. and District Yavatmal

...RESPONDENTS

Shri M.A. Kadu, Advocate for the appellants.
Shri Ajay Shende, Advocate for respondent No.1.
Shri K.L. Dharmadhikari, AGP for respondent Nos.2 and 3.

CORAM : URMILA JOSHI-PHALKE, J.
RESERVED ON : MARCH 17, 2023.
PRONOUNCED ON : JUNE 05, 2023

JUDGMENT :

Heard learned Counsel for the parties.

2. By this appeal, the appellant – V.I.D.C. has challenged the judgment and award dated 14/09/2016 passed in L.A.C. No.557/2007 by which the reference Court has awarded the compensation of Rs.3,40,000/- per hectare to the claimant.

3. As per the contention of the appellant, land bearing Gat No.43 admeasuring 3.00 hectare of village Kolhi, Taluka Babhulgaon, District Yavatmal acquired by non-applicant No.2 vide Award No.2/47/2002-03 dated 22/09/2005. The Notification under Section 4 was issued on 05/06/2003. The non-applicant No.2 - Special Land Acquisition Officer awarded the compensation @ Rs.72,341/- per hectare for 2.38 HR land and @ Rs.30,188/- for 0.62 HR land.

4. Being aggrieved and dissatisfied with the compensation awarded, the original claimant preferred reference under Section 18 of the Land Acquisition Act, 1894 on the ground that the Special Land Acquisition Officer had not taken into consideration fertility, productivity and potential of the land and awarded inadequate compensation. The claimant has claimed compensation @Rs.4,00,000/- per hectare.

5. The said reference was resisted by the original non-applicant Nos.1 to 3 on the ground that the compensation awarded by the Special Land Acquisition Officer rightly by considering all the aspects laid down in the Land Acquisition Act for determination of compensation and rightly considered the property from the document and sale instances etc.

6. In support of the contention, claimant had examined himself and also relied upon the documents 7/12 extract Exhibit 26, Sale-deed Exhibit 27 and 28, Letter by Nagpur Krishi Utpann Bazar Samiti Exhibit 30 and previous judgment passed in L.A.C. No.48/2007 Exhibit 31. The claimant has also examined Shri Sharad Bajirao Umale, Expert to prove that he was getting income from the orange trees. The claimant also claimed the compensation against one mango tree. The reference Court had considered entire evidence and come to the conclusion that the claimant is entitled to receive compensation @Rs.3,40,000/- per hectare. Considering the land as a seasonally irrigated and also awarded the compensation @Rs.2684/- each for 104 orange trees and @Rs.7700/- for one mango tree.

7. Being aggrieved and dissatisfied with the judgment and award passed by the reference Court, present appeal is preferred by the V.I.D.C. who is the acquiring body on the ground that the reference

Court has awarded excessive and exorbitant compensation. The Reference Court had not considered the judgment of the Hon'ble Apex Court in the case of ***Chindha Fakira Patil (D) thr. L.Rs. Vs. The Special Land Acquisition Officer, Jalgaon, 2011 (10) SCC 787*** wherein it is held that the claimants are not entitled to receive the compensation towards the land when the compensation is awarded for the trees. Thus, the claimants are not entitled to receive the compensation for 0.62 HR land wherein the orange trees were situated and compensation was granted by applying the multiplier method, while granting the compensation against the said trees.

8. Heard Shri M.A. Kadu, learned Counsel for the appellants. He submitted that the issue involved in the appeal is covered by the judgment of this Court in ***First Appeal No.140/2012 (Naresh Samirmal Kotecha Vs. State of Maharashtra and ors.)*** with ***First Appeal No.909/2012 (V.I.D.C. Vs. Naresh Samirmal Kotecha & ors.)*** decided on 22/12/2020 wherein this Court by referring the judgment held that the compensation for fruit trees is granted by the reference Court by capitalizing the income with reference to the yield, the claimant is not entitled for separate compensation for his land and the same is rightly refused by the reference Court.

9. He further submitted that in *First Appeal No.685/2014 (Shobha wd/o Dyaneshwar Lokhande and ors. Vs. The State of Maharashtra and ors.)* decided on 08/12/2022 wherein the land from the village Kolhi was acquired for submergence in Bembla River Project by the same notification. This Court has awarded the compensation @Rs.2,68,000/- per hectare. Thus, the claimant is also entitled for the same rate. He further submitted that in view of the judgment of the Hon'ble Apex Court as well as this Court, the claimant is entitled to receive the compensation towards the land admeasuring 2.38 HR and they are not entitled to receive the compensation towards the land for 0.62 HR as they have received the compensation for fruit trees by capitalizing the income with reference to the yield. Hence, appeal deserves to be allowed.

10. *Per contra*, Shri Ajay Shende, learned Counsel for respondent No.1 supported the judgment of the reference Court and submitted that the appeal is devoid of merits and liable to be dismissed.

11. The appellant challenges the judgment of the learned reference Court dated 14/09/2016 in respect of seasonal irrigated land Gat No.43 admeasuring 3.00 hectare for village Kolhi, Tq. Babhulgaon,

District Yavatmal on account of submergence of Bembla Project. A Notification under Section 4 was issued on 05/06/2003 vide Award No.2/47/2002-03. The appellant – acquiring body awarded the compensation @Rs.72,341/- per hectare for 2.38 HR and @Rs.30,188/- for 0.62 HR. The said compensation was enhanced by the reference Court for the land @Rs.3,40,000/- per hectare. Besides that the reference Court has also awarded the compensation @ Rs.2684/- each for 104 orange trees and Rs.7700/- for one mango tree.

12. Shri M.A. Kadu, learned Counsel submitted that the issue is already covered by the judgment of this Court in First Appeal No.685/2014 (supra) wherein this Court has awarded the compensation of Rs.2,68,000/- per hectare by relying upon the judgment of the reference Court in ***L.A.C. No.396/2007*** (*Janardhan Maroti Sahare and ors. Vs. The State of Maharashtra and ors.*) which is also in respect of land bearing Gat No.105 admeasuring 1.21 HR of village Kolhi in the same project, from the same Notification, in which the learned Reference Court has enhanced the compensation for agricultural land @Rs.2,68,000/- per hectare. ***First Appeal No.954/2017*** (*The Executive Engineer, Bembla Project Division Vs. Janardhan Maroti Sahare and ors.*) against it has been withdrawn, which has been recorded in the judgment dated 12/10/2018 by this Court, in view of which, it is

apparent, that the present appellant has accepted the rate of Rs.2,68,000/- per hectare as the rate for agricultural land in village Kolhi.

13. Shri Kadu, learned Counsel vehemently submitted that in view of the judgment of this Court, the claimant is also entitled to receive the compensation @Rs.2,68,000/- per hectare. Admittedly, the land involved in the present case is concerned is a well bagayat land. The claimant has produced the evidence on record i.e. the sale instances Exhibit 27 which shows that the land situated at village Kolhi dated 19/04/1994 whereby 1.55 HR land was sold for Rs.1,90,000/- (i.e. @ Rs.1,22,580/- per hectare).

14. In the present case, the Notification was issued on 05/06/2003. The claimant is entitled to receive rise of 10% per annum for each year. The claimant also placed reliance on judgment by the reference Court in L.A.C. No.48/2007 vide Exhibit 31 wherein for the land situated at village Kolhi which was acquired by the same Notification and for the same project was awarded the compensation @ Rs.3,40,000/- per hectare. Thus, the rate decided by the reference Court by considering the fertility and potential of the land is correct and proper one. It is justified by the reasons assigned by the reference Court.

15. The only question arises whether the claimant is entitled to receive the compensation for the land when they received the compensation for the trees by applying the method of capitalizing the income with reference to the yield. It is held by the Hon'ble Apex court in *Ambya Kalya Mhatre Vs. State of Maharashtra 2012 (1) Mh.L.J. 9* wherein it is held that "Further, if the market value has been determined by capitalizing the income with reference to yield, then also the question of making any addition for the land or for the trees separately does not arise." Since in the case in hand, the compensation for fruit trees situated in an acquired land in 0.62 HR is granted by the reference Court by capitalizing the income with reference to the yield, the claimant is not entitled for separate compensation for the land to the extent of 0.62 HR. In view of that the judgment and award of the reference Court deserves to be modified.

16. The reference Court has recorded findings while granting enhancement of compensation for the fruit trees on proper analysis of evidence on record. On the basis of material on record, the reference Court was justified in granting enhanced compensation. The appellant has not been able to point out any other material to interfere with the said finding. I find that the compensation granted by the reference Court for fruit bearing trees does not deserve any interference. Only

modification required in the judgment and award is that the claimant is entitled to receive the compensation @ Rs.3,40,000/- for 2.38 HR and the claimant is not entitled to receive the separate compensation for 0.62 HR land as compensation was granted for fruit trees by capitalizing the income with reference to the yield.

17. In view of that, the appeal filed by the acquiring body needs to be partly allowed to the extent of modification in the compensation awarded to the claimant. Hence, I pass following order :

- (i) First appeal is partly allowed.
- (ii) The judgment and award of the reference Court is modified to the extent that the claimant is entitled to receive compensation @ Rs.3,40,000/- per hectare with accrued interest as per the judgment of the reference Court for 2.38 HR land.
- (iii) The rest of the award in respect of the orange trees and mango tree is maintained.
- (iv) The claimant is entitled to receive all statutory benefits as awarded by the reference Court.
- (v) Appeal is disposed of with no order as to costs.

(URMILA JOSHI-PHALKE, J.)