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

FIRST APPEAL NO. 1385 OF 2008
IN
CROSS-OBJECTION NO. 20 OF 2009

APPELLANTS:
Ori. Respondents
(On R.A.)

1. The Executive Engineer,
   Medium Project, Nagpur.
2. The State of Maharashtra.

...V E R S U S...

RESPONDENTS
Ori. Petitioner
(On R.A.)

1. Yuvraj s/o Kashiram Deshmukh,
   Aged 38 years, Occu: Agriculture.
2. Telrandas s/o Kashiram Deshmukh,
   Aged 28 years, Occu: Teacher.
3. Digambar s/o Kashiram Deshmukh,
   Aged 21 years, Occu: Education.
4. Ku. Padma d/o Kashinath Deshmukh,
   Aged 26 years, Occu: Household.
5. Ku. Hira d/o Kashiram Deshmukh,
   Aged 22 years, Occu: Education.
6. Sau Indira w/o Gajanan Kinkar,
   Aged 31 years, Occu: Agriculturist.
7. Smt. Shantabai wd/o Kashiram Deshmukh,
   Aged 65 years, Occu: Agriculturist.

   All residents of Khairi, Tah. Karanja,
   District Wardha.

CROSS-OBJECTION NO. 20 OF 2009
IN
FIRST APPEAL NO. 1385 OF 2008

APPELLANTS (Respdts. in Cross-objection)

1. The Executive Engineer, Medium Project, Nagpur.
2. The State of Maharashtra, Through The Collector, Wardha.

-Versus-

RESPONDENTS: (Cross Objectors)

1. Yuvraj s/o Kashiram Deshmukh, Aged 38 years, Occu: Agriculture.
2. Telrandas s/o Kashira Deshmukh, Aged 28 years, Occu: Teacher.
3. Digambar s/o Kashiram Deshmukh, Aged 21 years, Occu: Education.
4. Ku. Padma d/o Kashiram Deshmukh, Aged about 26 years, Occu: Household.
5. Ku. Heera d/o Kashiram Deshmukh, Aged 22 years, Occu: Education.
6. Sau. Indira w/o Gajanan Kinkar, Aged 31 years, Occu: Agril.
7. Smt. Shantabai wd/o Kashiram Deshmukh, Aged 65 years, Occu: Agriculturist.

All are residents of Khairi, Tq. Karanja (Ghadge), Distt. Wardha.

Mr M.A. Kadu, counsel for the appellants.
Mr S.U. Nemade, counsel for the respondents.

CORAM : URMILA JOSHI-PHALKE, J.
DATE OF RESERVE : 14/03/2023
DATE OF DECISION : 05/06/2023

ORAL JUDGMENT :

1. The appellants/State of Maharashtra has challenged the judgment and award passed by the Civil Judge, Senior Division, Wardha in Land Acquisition Case No. 44/1991 dated 19/09/2003 by which granted the compensation at the rate of Rs.72,124/- to the original claimants.

2. The brief facts which are necessary for the disposal of the appeal are as under:

The respondents who are the original claimants (hereinafter referred as claimants) were the owner of the survey Nos. 126, 128, 130, and 133/2 admeasuring 1-H, 62-R. The appellants/ State had acquired these lands for the Car River Project. Accordingly, the notification under Section 4 was issued on 22/08/1988. The notification under Section 6 was issued on 07/09/1989 and the Special Land Acquisition Officer passed an award on 24/05/1990. The Special Land Acquisition Officer has awarded the amount of Rs. 25,767/- and the claimants accepted the said amount under protest.

3. Being aggrieved and dissatisfied with the said amount, the claimants preferred the reference under Section 18 of the Land Acquisition Act, on the ground that the Special Land Acquisition Officer had not considered the potential, fertility, and quality of the land. The Land Acquisition Officer further had not considered the sale transactions which were on the higher side and awarded the compensation on the basis of revenue assessment which is illegal and erroneous. The land of the applicant was having high-quality potential, and was fetching the market value at the rate of Rs.50,000/- per hectare. However, the Land Acquisition Officer accessed its market value for just Rs.11,000/- per hectare. Besides the above award of compensation, the Land Acquisition Officer had not paid any amount towards 150 Orange trees which were standing in the field. Thus, the claimants are entitled to receive compensation for 150 orange trees, and for the trees like Nim, Ajan, Bihada, and Khair.

4. In response to the notice, the appellants/State and the Land Acquisition Officer resisted the claim on the ground that the Special Land Acquisition Officer has considered the potential of the land, market value of the land and awarded the compensation which is just and reasonable one.

5. To substantiate the contention, the claimant No.1 Yuvraj Kashiram Deshmukh and PW-2 Liladhar Narayan Dobale examined to prove the market value of the acquired land. Besides oral evidence, the claimants placed reliance on certified copy of the objection raised by his father at Exhibits No. 42 and 43. As per the

evidence of the claimants, the land was having black cotton soil and they were getting income from the said land. The sale transactions of the land were prohibited in their village. However, the sale transactions in the village Behadi which is an adjoining village, and the land of the same quality, fetch the price of Rs. 30,000/- to 32,000/- per acre. The sale transactions between Santosh Bodkhe and others, and as per the certified copy of the index shows that the market value, at the relevant time, was Rs. 30,000/- to 32,000/- per acre. The claimants also placed reliance on the sale transaction between Bhaskarrao Deoraoji Dobale and Bhaundas Narayan Dobale dated 28/12/1981, which shows that 1-acre land was sold for Rs. 23,000/-. Thus, as per the evidence of the claimants, they are entailed to receive enhanced compensation by accepting the rate of Rs. 50,000/- per hectare. Admittedly, the respondents/acquiring body has not adduced any evidence in support of the contention.

6. After hearing both the sides and after appreciating the evidence, the learned Reference Court had considered the sale-deeds which were placed on record i.e. Exhibit No.58, and awarded the compensation at the rate of Rs. 40,000/- per hectare.

7. Being aggrieved and dissatisfied with the judgment and award, the present appeal is preferred by the acquiring body on the ground that the reference Court has awarded the compensation which is excessive and exorbitant one. The ground raised in the appeal is that the reference Court has awarded the enhanced amount of compensation without any evidence on record, therefore, the judgment and award passed by the learned Reference Court

deserves to be quashed and set aside.

8. Heard learned counsel Mr M.A. Kadu, for the appellants. He submitted that there is no evidence adduced by the claimants to show the market value of the land. The learned Reference Court erroneously placed reliance on Exhibit No. 58 i.e. sale instance. The claimants also failed to prove that there were Orange Trees standing in the agricultural field and they are entitled to receive the compensation against the said trees also. Therefore, the judgment and award passed by the learned Reference Court is erroneous and liable to be quashed and set aside.

9. Per contra, the learned counsel Mr S.U. Nemade supported the judgment of the learned Reference Court. He further submitted that the learned Reference Court has not awarded any compensation towards orange trees which were standing in the acquired land. Therefore, the judgment of the learned Reference Court deserves to be modified. In support of his contention, he placed reliance on ***Chindha Fakira Patil V/s The Special Land Acquisition Officer reported in 2012 (2) Mh.L.J. 530*** wherein it is held that, when there were Wells in the acquired land, the mere fact that the appellant had not calculated sugarcane or wheat, cannot lead to the inference that the land was not irrigated land. He further placed reliance on ***First Appeal No. 41/08 decided on 13/10/2014 and First Appeal No. 156/2018 decided on 28/01/2021***.

10. After hearing both the sides and on perusal of the record with able assistance of the learned counsels of both the sides, the

following points arises my consideration:-

a) Whether the learned Reference Court is justified in awarding an enhanced amount of compensation?

b) Whether the judgment and award passed by the learned reference Court call for any interference?

11. There is no dispute that the claimants were the owner of the field survey No. 126, 128, 130, and 133/2, admeasuring 1 H 62 R. Admittedly, these fields were acquired by the Government along with the others for the Car River Project. Undisputedly, the notification under Section 4 was issued on 22/08/1988, and the notification under Section 6 was issued on 07/09/1989. The lands with the applicants were situated at Mouza Khaire Taluka Karanja, Dist. Wardha. The appellants/acquiring body has challenged the judgment as well as the claimants preferred the cross-objection for enhancement of the compensation, on the ground that the learned Reference Court has not awarded the compensation for the orange trees and other trees.

12. On perusal of the records of the case, it is seen that the claimants lead evidence before the learned Reference Court and placed reliance on sale instances i.e. Index Exhibit No. 56, Exhibit No. 57, and Exhibit No. 58. The learned reference Court has taken into consideration Exhibit No. 58, wherein 18 R land was sold by Mahadevrao Doma Bodkhe to Pandurangji Lahanuji Bodkhe on 6/2/1987 i.e prior to the notification under Section 4 was issued in the present case.

13. In the present case, Section 4 notification was issued on 22/08/1988 i.e approximately one and half years of the said sale instance. The learned reference Court had discussed the evidence and observed that Exhibit No. 56 is the sale instance of 1-acre land in the same village Khaire, which was sold to Rs. 23,000/- and the transaction is of 1981. Exhibit No. 56 shows that 1-acre land has fetched the price of Rs. 23,000/- in the year 1981. The exhibit No. 57 is a transaction of 18 R land for the consideration of Rs. 15,000/- which means that, the price of the land would be around Rs.33,000/- per acre in the year 1987. Exhibit No.58 is the transaction of the land in Village Bahalu, wherein price of 1 H 21 R is shown as Rs. 15,000/- means approximately Rs. 18,000/- per acre. Thus, the documents on record show that the lands fetched a price of Rs. 18,000/- to 13,000/- per acre in the year 1989. As per the contention of the claimants, the market price was fetched more than Rs.50,000/- per hectare. The 7/12 extract which is at Exhibit 47 and Exhibit No. 48, nowhere shows that any irrigation facility was available in the said land to irrigate the crops. The 7/12 extract also nowhere shows that the claimants have cultivated the Bagayati Crop in the said land. The Special Land Acquisition Officer has also treated the land as dry crop land. The sale transactions relied upon by the applicants were admittedly not properly proved by the applicants. However, considering the evidence adduced by the claimants and by applying the guesswork, the learned Reference Court had considered the market value of the acquired land as Rs. 40,000/- per hectare.

14. The learned counsel placed reliance on the judgments of this Court in First Appeal No. 41/2008 which is in respect of the lands situated at Yavatmal District. Thus, the judgment relied upon is not regarding the lands from the same village or adjoining the village. Another judgment on which reliance was placed is First Appeal No. 156/2018 wherein also the lands acquired are from village Dhabha, District Yavatmal i.e. from another district.

15. Thus the ground of parity is not available to the claimants in the present case as the lands involved in the relied judgments and the land in the present case are acquired for different projects from different villagers and from different Districts. The Hon'ble Apex Court in the case of ***Chindha Fakira Patil Vs Land Acquisition Officer*** referred (supra) held that every reference proceeding must be decided on the basis of the evidence produced and the issues raised by the parties in the proceeding is concerned. The learned Reference Court had considered the market value of the land on the basis of the sale instances and by applying the same guesswork. Admittedly, the sale instances which are placed on record are not of the same village. The claimants have adduced any evidence to show that the lands in respect of which sale instances are filed on record and the land acquired are of the same quality, same fertility. However, the learned Reference Court has considered the evidence and enhanced the compensation amount.

16. As per the compensation which is claimed by the applicants through cross-objections, on the ground that the learned reference Court has not awarded any compensation to the claimants

towards orange trees. As observed by the Hon'ble Apex Court in the case of ***Chindha Fakira***, every reference is to be decided on the basis of evidence adduced by the claimants. Admittedly, in the present case, the claimants have not adduced any evidence to show the age and yield of the said orange trees. In fact, the claimants failed to adduce the evidence of experts to prove that the trees were fruit-bearing trees and they were getting income from the said trees. The evidence of the claimant- Yuvraj also nowhere shows that they were getting some income from the said trees, and the trees were fruit-bearing trees. There is no whisper in his evidence regarding the age of trees or the yield, they are getting from the said trees. On perusal of the 7/12 extract, Exhibit No. 47 shows that the Orange trees are in a dry condition "वाळण्याच्या अवस्थेत आहे". The endorsement of 7/12 extract is sufficient to show that the Orange Trees were not fruit-bearing trees and the claimants were not getting any income from the said trees.

17. In the absence of any evidence, the claimants are not entitled for any enhanced compensation of the amount towards the said trees. The objection raised by the claimant before the Land Acquisition Officer also nowhere shows that his land was irrigated land and he was irrigating the said land by way of Well or River Water. In fact, there is no Whisper in Exhibit No. 42, that the land was irrigated land. In Exhibit No. 43 also, there is no whisper regarding the irrigation of the land.

18. As regards the rate of compensation for the land is concerned, the learned Reference Court has rightly considered the

evidence and awarded the compensation. As already observed that in the absence of evidence, the learned reference Court rightly rejected the claim of the claimants towards the orange trees. The endorsement on the 7/12 extract also shows the condition of the trees which were standing in the acquired land.

19. In view of that, the claimants failed to prove that they are entitled to receive the compensation towards the orange trees. The appellants also fail to prove that the compensation awarded by the learned reference Court is excessive and exorbitant one.

In view of above discussion, the appeal filed by the acquiring body as well as the cross-objection filed by the claimants deserves to be dismissed. Hence, I pass the following order.

a) The first appeal bearing No. 1385/2008 and the Cross-objection No. 20/09 are **dismissed** with no order as to costs.

JUDGE

RKN

Signed By:RAJESH K NANDURKAR

Signing Date:05.06.2023 16:25