



Judgment

36 corrected fa1169.08

1

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

FIRST APPEAL NO.1169 OF 2008

Pradeep s/o Krushnarao Deshmukh,
aged about 59 years, occupation-
agriculturist, r/o Jalka, taluka
Ralegaon, district Yavatmal. **Appellant.**

:: V E R S U S ::

1. The State of Maharashtra
represented through the Collector,
Yavatmal.

2. The Special Land Acquisition
Officer, Yavatmal **Respondent.**

=====

Shri S.M.Thakre, Counsel for the Appellant.
Shri M.A.Kadu, Assistant Government Pleader for Respondents/
State.

=====

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 17/03/2023

PRONOUNCED ON : 05/06/2023

JUDGMENT

1. By this appeal, the appellant (claimant) challenges judgment and award dated 26.11.2007 passed by learned Civil Judge Senior Division, Pandharkawada (Kelapur) in Land Acquisition Reference Case No.541/2002 whereby the claim application of the claimant was partly allowed. The present appeal is preferred for enhancement of compensation.

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

.....2/-

2

The claimant is the owner of survey No.3/1 admeasuring 41R situated at village Jalka, taluka Ralegaon, district Yavatmal. The respondents have acquired the said land for the purpose of "Majra Reservoir Project". Accordingly, the respondents have issued Notification under Section 4 on 28.12.1995. The Notification under Section 6 was issued on 12.6.1996. The award was passed by the Land Acquisition Officer vide No.32/47/94-95 on 1.6.1997. The claimant has received the compensation amount under protest. By the said award, the Special Land Acquisition Officer has awarded the compensation at the rate of Rs.21,500/- per hectare.

3. Being aggrieved and dissatisfied with the said award, though the claimant accepted the amount of compensation under protest, the claimant preferred the reference and claimed the compensation at the rate of Rs.60,000/- per acre.

4. As per the contention of the claimant, the acquired land was of a superior quality having black soil. The claimant was cultivating the said land by growing cotton and tur etc.. The village Jalka is at a distance of eight kilometers from taluka place Ralegaon. A facility like grampanchayat is

3

available in the village. Due to the Majra Project, the agricultural lands are converted into bagayat land. In LAC Nos.99 and 65/1995, the claimants therein received compensation at the rate of Rs.65,000/- per hectare. The lands involved in LAC Nos.99 and 65/1995 were acquired in the year 1994 that is on 24.8.1994 prior to acquisition of the said lands. The land of the claimant was acquired in the year 1997 that is after three years. Thus, the claimant is entitled to receive the compensation at the rate of Rs.65,000/- per hectare. The claimant is also entitled to receive the compensation after adding 10% escalation per year.

5. The reference by the claimant was resisted by the respondents on the ground that the claimant has not adduced any evidence before the Special Land Acquisition Officer to show that his land was of superior quality and fertilized and, therefore, the Special Land Acquisition Officer has rightly assessed the compensation amount. Hence, the appeal deserves to be dismissed.

6. To substantiate the contentions, the claimant adduced his oral evidence and reiterated the contentions as per his pleading in the plaint. Besides his oral evidence, he

4

placed reliance on certified copy of the common judgment passed in LAC Nos.99 and 65/1995 (Exhibit-56), the award passed by the Special Land Acquisition Officer (Exhibit-3), and 7/12 extract (Exhibit-7).

7. The respondents have not adduced any evidence.

8. After appreciating the evidence, the reference court has enhanced the compensation at the rate of Rs.65,000/- per hectare.

9. Being aggrieved and dissatisfied with the amount of compensation awarded by the reference court, the present appeal is preferred on the ground that the reference court has failed to appreciate the market value of the land and awarded the compensation at a lower rate. In fact, the land of the claimant was of a black soil and of a good quality and the claimant was getting good income from the said land. The reference court has not appreciated the evidence and has awarded a meagre amount towards the compensation.

10. Heard learned counsel Shri S.M.Thakre for the claimant and learned Assistant Government Pleader Shri M.A.Kadu for the respondents/State.

5

11. Learned counsel Shri S.M.Thakre for the claimant submitted that the reference court has not considered the potential, the market value, and quality of the land and awarded the compensation at a lower rate.

12. To substantiate his contentions, learned counsel Shri S.M.Thakre for the claimant placed reliance on the following decisions:

Haryana State Industrial Development Corporation vs. Pran Sukh and others, reported in (2010)11 SCC 175;

Krishi Utpadan Mandi Samiti, Sahaswan, District Badaun, through its Secretary vs. Bipin Kumar and another, reported in (2004)2 SCC 286;

Ranvir Singh and another vs. Union of India, reported in (2005)12 SCC 59;

Special Land Acquisition Officer, BTDA, Bagalkot vs. Mohd.Hanif Sahib Bawa Sahib, reported in (2002)3 SCC 688;

The State of Maharashtra and anr vs. Shri Chandrakant Mangilal Samdadia and anr, reported in 2013 (1) Mh.L.J. 397, and

First Appeal No.82/2023 (Ashok Madhukar Duddulwar vs. The State of Maharashtra and anr) decided on 15.2.2023.

6

13. Learned Assistant Government Pleader Shri M.A.Kadu for the respondents/State supported the judgment of the reference court and submitted that in view of the judgment relied by the claimant in LAC Nos.99 and 65/1995, the reference court has awarded the compensation at the rate of Rs.65,000/- per hectare and, therefore, no enhancement is warranted.

14. After hearing both the sides, issue arises for consideration is,

Whether the claimant is entitled for enhancement of the compensation?

15. The claimant has adduced his evidence in support of the contentions that the acquired land owned by him was of a superior quality having black soil and he he was getting income from the said land by cultivating the same. Admittedly, besides his oral evidence, he has not adduced any other evidence. His cross examination shows that the distance between village Ralegaon and his village Jalka is about six kilometers. It further shows that he has not produced any document of sale instance. He has also not

7

produced on record any expert report to show that his land was having black soil and of a superior quality. Thus, the evidence shows that except his oral evidence, no evidence is adduced by him to prove his contentions. The award was declared on 1.6.1997. The Land Acquisition Officer has verified the record and classified the land acquired. The award also shows that the village Jalka is at a distance of five kilometers from taluka place. The only evidence adduced by the claimant is the certified copy of the judgment in LAC Nos.99 and 65/1995 wherein also the lands involved are of village Jalka and were acquired for the same project by the separate Notification. The award was declared in the said case on 24.8.1994 that is prior to three years of the Notification in the present case. In the said judgment, the reference court has considered the evidence and observed that the petitioners placed reliance on the judgment of the reference court Exhibit-34 and 7/12 extract. The reference court has further considered the judgment Exhibit-32 wherein the lands involved are of village Warna which is about 2 kilometers from the lands of the claimants. The claimants in the above said reference produced the certificate of Talathi. After appreciating the evidence, the reference court in the said

8

case came to the conclusion that the amount of Rs.65,000/- per hectare is the appropriate price towards the acquired lands.

16. Thus, the reference court awarded the compensation for the lands which were acquired by the award dated 24.8.1994 at the rate of Rs.65,000/- per hectare. The land involved in the present appeal is also of the same village and acquired for the same project only by different Notification and in a different year. As relied upon by learned counsel Shri S.M.Thakre for the claimant in the case of **Special Land Acquisition Officer, BTDA, Bagalkot vs. Mohd.Hanif Sahib Bawa Sahib**, the Honourable Apex Court held that appreciation at the rate of 10% for every subsequent year after the base year was neither excessive nor unreliable for the land in an area which was within municipal limit.

17. Admittedly, in the present case, the claimant neither examined any vendor nor produced on record any sale instance. He only relied upon the judgment of the reference court in LAC Nos.99 and 65/1995 wherein the rate of 65,000/- per hectare was granted to the land owners. Thus, the claimant is also entitled to receive the same rate on the

9

ground of parity. The claimant is entitled to receive the compensation after adding 10% escalation per year. In LAC Nos.99 and 65/1995, the lands were acquired in the year 1994 whereas in the present case the award was passed on 1.6.1997. Thus, after adding 10% for every year, the claimant is entitled to receive **Rs.88,833/-** per hectare. Though the claimant relied upon the judgment of this Court as well as the judgments of the Honourable Apex Court and claimed the compensation at the enhanced rate to the tune of Rs.60,000/- per acre, no evidence is adduced.

18. In view of the judgment of the reference court in LAC Nos.99 and 65/1995, after adding 10% per year on the ground of parity, the claimant is entitled to receive compensation at the rate of **Rs.88,833/-** per hectare. In the result, the appeal deserves to be allowed partly. Hence, this Court passes following order:

ORDER

(1) The First Appeal is allowed partly.

(2) The claimant is entitled to receive compensation at the rate of **Rs.88,833/-** per hectare.

10

(3) The respondents shall calculate the amount of compensation and deposit the same within ten weeks from today along with the accrued interest.

(4) The claimant is entitled for all the benefits under the Land Acquisition Act.

The First Appeal is **partly allowed** and **disposed** of accordingly with no order as to costs.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!