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

FIRST APPEAL NO.494 OF 2018

Laxman s/o Fakira Pable, aged 65 years,
Occupation agriculturist, r/o Ansing, taluka Washim,
District Washim. ….. **Appellant.**

:: V E R S U S ::

1. Special Land Acquisition Officer,
Collector Office, Washim.

2. Executive Engineer, Minor Irrigation
Department, Washim, taluka Washim,
District Washim.

3. State of Maharashtra, through
Collector, Washim. ….. **Respondents**.

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Shri A.V.Bhide, Counsel for the Appellant.
Mrs.U.A.Patil, Counsel for Respondent No.2.
Mrs.Shamsi Haider, Assistant Government Pleader for Respondent Nos.1 and 3.

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CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 21/02/2023
PRONOUNCED ON : 17/04/2023

JUDGMENT

1. The appellant (claimant) has preferred the appeal under Section 54 of the Land Acquisition Act, 1894 (for short, "the said Act") against the judgment and award dated 8.4.2015 passed by learned District Judge-II, Washim in Land Acquisition Case No.67/2006. By this appeal, the claimant is seeking enhancement of compensation.

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

The claimant is the owner of field gat No./survey No.3 admeasuring 7.02HR of village Mohagavan Dag. The said land was acquired by the Land Acquisition Officer for the purpose of "Umra Kapse Laghu Pat Bandhara Yojana." Accordingly, Section 4 Notification was issued on 15.5.2003. The award was passed on 23.2.2005 vide case No.1/47/01-02. The Notice under Section 12(2) of the said Act was issued on 8.4.2005. The Special Land Acquisition Officer has determined the compensation of Rs.40,680/- for well and Rs.61,200/- for the land.

3. Being aggrieved and dissatisfied with the award of the Land Acquisition Officer, the claimant preferred the reference on the ground that the Land Acquisition Officer had not considered that the land of the claimant was irrigated land as a well was constructed. There were 277 orange trees, 277 sweet lime trees, 9 moha trees, 7 jambhul trees, 7 char Trees, 6 nilgiri trees, 6 teak wood trees, 2 mango trees, 10 bamboo trees, and 375 ber trees. The claimant has objected the

Notice under Section 9 and claimed compensation for the land at the rate of Rs.1,50,000/- per acre and adequate compensation for his acquired well, orange trees, and other trees. As per the contentions of the claimant, the acquired land was of good quality and fertile one. The potential of the land was not considered by the Land Acquisition Officer and awarded the inadequate compensation.

4. In response to the Notice, the respondent Nos.1 and 3 filed their written statement vide Exhibit-9 and respondent No.2 vide Exhibit-17 and denied the contentions of the claimant. As per the respondents, the Land Acquisition Officer rightly considered the market value of the land on the basis of the market rate at the relevant time and awarded the compensation.

5. To substantiate the contentions, the claimant adduced his evidence vide Exhibit-22. He reiterated the contentions as per the pleadings in the reference. Besides his evidence, he also examined CW2 Ravindra Narayanrao Kalaskar who issued the valuation report of the well situated in the agricultural land. CW3 Dilip Keshaorao Deshmukh is

examined to prove the certificate issued by him to show that there were 277 orange trees in the acquired land. Besides the oral evidence, the claimant has produced on record copies of various receipts to show that he has sold the yield of food grains in the APMC Market at Washim, Exhibits-30 and 31 and 39 to 42, Notice copy issued under Section 12(2) Exhibit-29, 7/12 extract Exhibits-27 and 28, sale instance Exhibit-32, copy of award Exhibit-26, certificate issued by CW3 Exhibit-57, sale instance Exhibit-33, certified copy of the judgment passed in LAC No.77/2008, valuation report Exhibit-53, electricity bills Exhibits-43 to 45.

6. On the other hand, learned counsel for the respondents relied upon the certified copy of the judgment passed by the reference court in LAC No.89/2007. The respondents have not adduced any oral evidence.

7. After appreciation of the evidence, the reference court has awarded the compensation at the rate of Rs.1.00 lac per hectare for the land, Rs.50,000/- towards trees, and Rs.50,000/- towards the well.

8. Being aggrieved and dissatisfied with the judgment and award passed by the reference court, the present appeal is preferred by the claimant on the ground that the reference court had also not considered the potentiality and fertility of the land and awarded the inadequate compensation. The land of the claimant was irrigated land as the claimant used to take two crops in each season and was earning Rs.10,000/- per acre. The reference court has not awarded the compensation adequately towards the orange trees and the sweet lime trees and, therefore, the claimant claimed enhanced amount of compensation.

9. Heard learned counsel Shri A.V.Bhide for the claimant, learned counsel Mrs.U.A.Patil for the respondent No.2, and learned Assistant Government Pleader for the respondent Nos.1 and 3/State.

10. Learned counsel Shri A.V.Bhide for the claimant submitted that the evidence on record sufficiently shows that the land of the claimant was irrigated land. The potentiality of the land was required to be considered. The reference court had not awarded the compensation for the trees. The

evidence of the claimant was not rebutted by the respondents.

11. In support of his contentions, learned counsel Shri A.V.Bhide for the claimant placed reliance on the decision of the Honourable Apex Court in the case of **Chindha Fakira Patil (dead) through LRs vs. Special Land Acquisition Officer, Jalgaon** reported in **2012(2) Mh.L.J. 530** wherein it is held that when there were wells in the acquired lands, the mere fact that the appellant had not cultivated the sugar cane or wheat cannot lead to the inference that the land was not irrigated land.

He further placed reliance on the decision of the Honourable Apex Court in the case of **Bilquis vs. State of Maharashtra and others**, reported in **(2018)7 SCC 530** wherein it is held that the orange trees would start yielding fruits from fifth year. Since the orange plants were about 4-5 years old, the court cannot ignore the fact that the trees were very much ripe for yielding orange fruits and awarded the compensation towards the trees.

12. *Per contra*, learned counsel Mrs.U.A.Patil for respondent No.2 submitted that the certificate issued by the Talathi was after award. The receipts on which the claimant relied upon do not bear the signature of any person. The electricity bill nowhere shows it is in the name of the claimant. The reference court has awarded the compensation on the basis of its earlier judgment and, therefore, no interference is called for.

13. Learned Assistant Government Pleader Mrs.Shamsi Haider for the respondent Nos.1 and 3/State submitted that the reference court has considered the evidence and awarded the compensation adequately and, therefore, no interference is called for.

14. After hearing the rival submissions of both the parties and going through the record, with their able assistance, point arises for my consideration, is:

> Whether the claimant is entitled for the enhanced amount of compensation by interfering the judgment and award of the reference court?

15. There is no dispute that the claimant is the owner of field gat No./survey No.3 admeasuring 7.02HR of village Mohagavan Dag and the said land was acquired by the Land Acquisition Officer for the purpose of "Umra Kapse Laghu Pat Bandhara Yojana." Admittedly, the said land was acquired by passing the award on 23.2.2005 and the compensation was awarded at the rate of Rs.40,680/- for the acquired well and Rs.61,200/- for the acquired land. There is no dispute that earlier, by deciding the reference bearing No.89/2007, in which the land from the same village was acquired for the same purpose by the same Notification, the compensation was awarded at the rate of Rs.1.00 lac per hectare. The claimant has claimed the compensation at the rate of Rs.1,50,000/- per acre, Rs.3000/- per orange tree, and Rs.1000/- per sweet lime tree.

16. To substantiate the contentions, the claimant has adduced his evidence vide Exhibit-22 and reiterated that his land was of a black soil having irrigated facility of well water. He was getting good income from the said land. He had planted the orange trees, sweet lime trees in the year 1998-99 and, therefore, he is entitled to receive the compensation

.....9/-

at the enhanced rate. During his cross examination, he admitted that two types of wells are constructed. He denied that his well was not constructed in a pakka construction. He further admitted that in 7/12 extract, Exhibits-27 and 28, there is no reference of orange trees. He has not filed any expert report regarding the valuation of the said orange trees. His cross-examination further shows that he has not produced any valuation report before the Land Acquisition Officer.

17. The claimant has adduced the evidence by examining CW2 Ravindra Narayanrao Kalaskar who visited the land of the claimant and issued the valuation report.

18. As per the evidence of CW Ravindra Kalaskar, he had visited the land of the claimant in the year 2005. The well was constructed by stones and bricks which was kaccha construction. The well was having water. The said well was constructed in the year 1979-80 and accordingly he valued the well at the rate of Rs.1,45,000/-.

This witness was cross-examined, however nothing incriminating came on record to falsify his version. Thus, nothing is on record to disbelieve his valuation report.

Admittedly, the date was not mentioned on the said valuation report.

19. CW3 Dilip Keshaorao Deshmukh was Talathi at the relevant time in the village Mohagavan. As per his evidence, he had issued the certificate on the basis of entry in the cultivation register showing that the claimant has cultivated 277 orange trees. This witness has denied that after receipt of the application for taking the entries, regarding the cultivation, the concerned officer has to verify the fact by visiting the land. The certificate issued by him is at Exhibit-57.

20. On the basis of the above evidence, the claimant claims the enhanced amount of compensation. There is no dispute that the claimant has not adduced any evidence by examining the vendor to prove the sale deeds. He merely filed on record the certified copies of the sale deeds. The sale deeds Exhibit-33 is of village Ansing dated 20.6.2001 that is prior to issuance of the Notification under Section 4 of the said Act. As per the said sale deed, 10R of land was sold for the consideration of Rs.85,000/-. Another sale deed is also from

the village Ansing, which is at Exhibit-34. Admittedly, both the sale deeds are not from the village Mohagavan. There is no evidence that the land of the claimant and lands which are sold vide the said sale deeds are of the same quality. The distance between two lands is also not explained by the claimant and, therefore, the reference court has taken into consideration the earlier judgment passed in LAC No.89/2007 in which the land involved was acquired by the same Notification and for the same purpose. By the earlier judgment, the reference court has awarded the compensation at the rate of Rs.1.00 lac per hectare. The land involved in LAC No.89/2007 was a dry crop land. There is no reference in the judgment passed in LAC No.89/2007 that the said land was having any facility of water either by well or by any other source to irrigate the land. It is observed by the reference court that the claimant has not entered into the witness box and proved that 277 orange trees were standing in the said land. Thus, the land involved in LAC No.89/2007 was admittedly a dry crop land.

21. Here, in the present case, the Land Acquisition Officer has awarded the compensation for the well. The

evidence of the claimant supported by 7/12 extract shows that one well having an electric motor pump was situated in the agricultural land. Thus, the oral evidence of the claimant, 7/12 extract, and the award Exhibit-26 show that the well water facility was available to the acquired land.

22. It is well settled that award in land acquisition cases is essentially a decision on a question of fact depending on the facts and circumstances of each case. However, the previous judgment can be taken into consideration to award the compensation and to fix the market value. As there is no evidence that the well water was available to the land through out the year, it can be inferred that the land of the claimant was seasonally irrigated land. As the reference court has awarded the compensation at the rate of Rs.1.00 lac for dry crop land, on the ground of parity, the claimant is also entitled to receive the compensation at the rate of 1.5 considering the land in question as a seasonally irrigated land.

As such, the claimant is entitled to receive the compensation at the rate of Rs.1,50,000/- per hectare.

23. Insofar as the compensation towards the well is concerned, the claimant has adduced the evidence by examining CW2 Ravindra Narayanrao Kalaskar who had visited the land of the claimant. He deposed that the well was constructed with bricks and stones. However, the said well was a kaccha construction. 7/12 extract also shows that the well was of kaccha construction. The valuation of the well is determined by CW2 Ravindra Kalaskar at the rate of Rs.1,45,000/-. While determining the compensation of the well, he had considered the type of construction, quality, appearance, maintenance, and area of the well. The said evidence is not rebutted during the cross-examination.

24. Admittedly, the date is not mentioned in the valuation report. However, by taking the assistance of the said valuation report and the entries in the 7/12 extract and by applying the same guesswork, it will be just and proper to award the compensation of Rs.1.00 lac for the said well.

25. Admittedly, the claimant has not adduced any evidence to prove the age of the orange trees and sweet lime trees. He merely relied upon his oral evidence and certificate

issued by Talathi CW3 Dilip Keshaorao Deshmukh. Though the claimant admitted that there is no entry regarding the orange trees in Exhibits-27 and 28 and 7/12 extracts, if Exhibits-27 and 28 are perused, it shows that in cultivation column of 7/12 extract, entry regarding the orange trees is appearing from 1998-99. In Exhibit-28 also, the entry regarding the orange trees is appearing in the area of 1H. Thus, there is an ample evidence to show that there were orange trees in the agricultural land of the claimant. Admittedly, there is no reference in the award regarding the cultivation of the orange trees. The claimant also has not adduced the evidence regarding the age of the orange trees by examining the expert. However, 7/12 extract shows that in the year 1997-98 he had cultivated the orange trees. The evidence of Talathi CW3 Dilip Keshaorao Deshmukh also shows that the claimant has cultivated 277 orange trees in one hectare.

26. Thus, on the basis of the oral evidence of the claimant, 7/12 extracts Exhibits-27 and 28, and evidence of Talathi CW3 Dilip Keshaorao Deshmukh, it appears that 277 orange trees were planted by the claimant and Talathi CW3

Dilip Deshmukh issued the certificate on the basis of cultivation register maintained in his office. If this evidence is taken into consideration, admittedly there is evidence to show that the claimant has cultivated the orange trees. As the claimant has not adduced any evidence to show that all 277 trees survived at the relevant time, i.e. at the time of the acquisition. Even, if it is assumed that only 50% of the trees are survived within the 4-5 years, the claimant is entitled to receive the compensation for the said trees. The entries in the 7/12 extract till the years 2004-05 show the existence of the orange trees in the agricultural field of the claimant to the extent of 1 hectare.

27. Thus, admittedly, the evidence on record shows that the claimant has planted the orange trees.

28. Thus, there is an ample evidence on record to show that the orange trees were in existence in one hectare of the acquired land till 2004-05, that is till the acquisition of the land.

29. As there is no evidence, regarding the exact number of trees, on the basis of guesswork, by accepting that

out of 277 trees, 50% trees would have been survived, the claimant would be entitled to receive the compensation against 135 trees. The claimant has cultivated the said trees in the years 1997-98. The land was acquired in the year 2005. At the time of issuance of Section 4 Notification, the approximate age of the orange trees was 4-5 years.

30. Learned counsel Shri A.V.Bhide for the claimant placed reliance on the decision of the Honourable Apex Court in the case of **Bilquis vs. State of Maharashtra and others** cited *supra* wherein it has been held that there is an ample material on record to show that there were orange trees which were about 4-5 years old. The documents also revealed the existence of babhul trees. It is not in dispute that the orange trees would start yielding fruits from the fifth year. Since the orange plants were about to 4-5 years old, the reference court was justified in observing that the orange trees have just then started yielding fruits to the claimant. It is further observed by the Honourable Apex Court that even otherwise this court cannot ignore the fact that the trees were very much ripe for yielding orange fruits. Therefore, in our considered opinion, the reference court was justified in awarding the

compensation in respect of the orange trees. The Honourable Apex Court considered Rs.60/- for each orange tree and multiplier applied was 10 years and held that the claimants would be entitled to Rs.600/- (60x10) per orange tree.

31. By applying the said ratio, as laid down by the Honourable Apex Court in the case of **Bilquis vs. State of Maharashtra and others** cited *supra,* in the present case also, the claimant is entitled to receive the compensation at the rate of Rs.600/- per orange tree for 135 trees. The reference court has already awarded Rs.50,000/- for the trees. The said Rs.50,000/- be considered as compensation for the other trees which were standing in the acquired land at the time of the acquisition. Besides Rs.50,000/-, the claimant is entitled to receive compensation at the rate of Rs.600/- per orange tree for 135 trees.

32. In my considered opinion, the reference court has awarded the compensation by treating the acquired land as a dry crop land. As the reference court had not considered the well irrigation facility was available to the land, the land is to be considered as seasonally irrigated land and, therefore, the

claimant is entitled to receive compensation at the rate of Rs.1,50,000/- per hectare for the acquired land; Rs.1.00 lac for the acquired well, and Rs.600/- per orange tree for 135 trees. I answer the point accordingly. Hence, this Court passes following order:

ORDER

(1) The First Appeal is **partly allowed**.

(2) The judgment and award dated 8.4.2015 passed by learned District Judge-II, Washim in Land Acquisition Case No.67/2006 is modified.

(3) The claimant is awarded compensation at the rate of Rs.1,50,000/- per hectare for the acquired land; Rs.1.00 lac for the acquired well, and Rs.600/- per orange tree for 135 trees.

(4) The respondent No.3 shall prepare calculation sheet by deducting the compensation already paid and shall deposit the balance amount of compensation in this Court within six months from today along with the accrued interest thereon.

(5) The claimant is also entitled to receive statutory benefits in accordance with the law.

With this, the First Appeal is disposed of. However, there shall be no order as to costs.

(URMILA JOSHI-PHALKE, J.)

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BHUSHAN RANA WANKHEDE

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